4-457

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1420.

GEORGE BENSON, APPELLANT,

vs.

MARTIN T. McMAHON, MARSHAL OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, AND JUAN N. NAVARRO, CONSUL GENERAL OF THE REPUBLIC OF MEXICO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 30, 1888.

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1

To Samuel H. Lyman, Esq.,

A Commissioner of the Circuit Court of the United States for the Southern District of New York; or to any Judge or Commissioner having jurisdiction of the complaint hereinafter stated:

Juan N. Navarro, of the city of New York, upon
his oath complains and says that he is the Consul-
General of the Republic of Mexico, duly recognized 2
as such by the President of the United States, and
that as such Consul-General, on information and be-
lief, he charges that George Benson, *alias* Charles
Bourton, *alias* Meyer, late of the Republic of France,
did on or about the first day of December, 1886, at
the City of Mexico, within the jurisdiction of the
Republic of Mexico, commit the crime of forgery
and of uttering forged papers.

In this, to wit: that heretofore, and in the year
1886, one Henry E. Abbey, of the city of New York,
was, and still continues to be, engaged in the busi-
ness of manager of theatrical and operatic and con-
cert troupes and companies; that at the time above 3
stated, in the City of Mexico, in the Republic of
Mexico, there was, and still continues to be, a cer-
tain theatre known as the "Teatro Nacional," and
that in the month of September, 1886, said Henry
E. Abbey engaged the said theater for one month
from the fifteenth (15th) day of December, 1886, for
the purpose of giving a series of concerts and op-
eras; and on or about the first day of December,
1883, had deposited the sum of five hundred dollars
on account for the rent of said theatre for the per-
iod stated; and on or before the first day of Decem-
ber, 1886, an announcement and advertisement of
the giving of said concerts and operas under the

4 management of said Henry E. Abbey, at the said theatre, had been made by the said Henry E. Abbey in the newspapers in the City of Mexico, in the Republic of Mexico aforesaid.

That thereupon said George Benson, *alias* Charles Bourton, *alias* Meyer, being in the City of Mexico, in the Republic of Mexico aforesaid, did, on or about the first day of December, 1886, at the City of Mexico, and in the Republic of Mexico aforesaid, and within the jurisdiction thereof, fraudulently, feloniously, falsely and wickedly, and with intent to defraud said Henry E. Abbey of the city of New York aforesaid, and certain and divers persons then and there residing in the City of Mexico,
5 in the Republic of Mexico aforesaid, and whose names are to this complainant unknown, and the public of the City and Republic of Mexico, make, counterfeit, forge and utter, knowing it to be forged, a certain instrument in writing, to wit, a certain letter of credence dated on or about the day of November, 1886, and addressed to the manager of the said Teatro Nacional of the City of Mexico, purporting and pretending to have been signed by the said Henry E. Abbey, and purporting and pretending to appoint said George Benson, *alias* Charles Bourton, *alias* Meyer, under the name of Marcus Meyer, an agent of said Henry E. Abbey, in the
6 City of Mexico, for the purpose, *inter alia*, of taking possession of the box office of said theatre, and of printing, selling and disposing of tickets of admission to the said operas and concerts about to be given in the City of Mexico, under the management of said Henry E. Abbey as aforesaid.

And that thereupon, in pursuance and by virtue of said letter the manager of the said Teatro Nacional permitted the said George Benson, *alias* Charles Bourton, *alias* Meyer, to take possession of the box office of said theatre for the purpose of selling tickets of admission to said operas and concerts. That thereupon the said George Benson, *alias* Charles Bourton, *alias* Meyer, caused

tickets of admission to said operas and concerts to 7
be printed, and announced in the newspapers, in the City of Mexico, the sale of the same at the box office of said theater, and that thereupon the said George Benson, *alias* Charles Bourton, *alias* Meyer, proceeded to sell said tickets of admission to said operas and concerts, for and in consideration of certain sums of money, to divers persons in the City of Mexico; and that thereupon said George Benson, *alias* Charles Bourton, *alias* Meyer, realized from the sale of said tickets of admission a sum of money amounting to at least twenty thousand dollars, which said sum of money he took possession of and forthwith fled from the jurisdiction of the Republic
of Mexico, to the great damage and prejudice of 8
divers persons in the City of Mexico, and the public of said city of Mexico.

And the said Juan N. Navarro, in his official capicity as Consul General of the Republic of Mexico for the United States of America, further charges that said George Benson, *alias* Charles Bourton, *alias* Meyer, did, on or about the first day of December, 1886, at the city of Mexico, within the jurisdiction of the Republic of Mexico, commit the crime of forgery and of uttering of forged papers in this, to wit:

That heretofore, and in the year 1886, one Henry
E. Abbey of the city of New York was, and still 9
continues to be, engaged in the business of manager of theatrical and operatic and concert troupes and companies; that at the time above stated, in the City of Mexico, in the Republic of Mexico, there was, and still continues to be, a certain theater known as the "Teatro Nacional," and that in the month of September, 1886, said Henry E. Abbey engaged the said theater for one month from the fifteenth day of December, 1886, for the purpose of giving a series of concerts and operas; and on or before the first day of December, 1886, had deposited the sum of five hundred dollars, on account, for the rent of said theater for the period stated; and on

10 or before the first day of December, 1886, an announcement and advertisement of the giving of said concerts and operas under the management of said Henry E. Abbey at the said theater, had been made by said Henry E. Abbey, in the newspapers in the City of Mexico, in the Republic of Mexico, aforesaid.

That thereupon said George Benson, *alias* Charles Bourton, *alias* Meyer, being in the City of Mexico, in the Republic of Mexico, did, on or about the first day of December, 1886 at the City of Mexico, and in the Republic of Mexico, aforesaid, and within the jurisdiction thereof, with intent to defraud said Henry E. Abbey, and divers persons 11 then and there residing in the City of Mexico, in the Republic of Mexico, and the public of the Republic of Mexico, did fraudulently, feloniously, and wickedly falsely make and forge, and utter knowing it to be forged, an instrument or writing purporting to be the act of another by which certain rights and property were purported to have been created. In that at the time and place aforesaid, the said George Benson *alias* Charles Bourton, *alias* Meyer, did forge the name and signature of the said Henry E. Abbey to a certain ticket of admission to one of said operas or concerts about to be given as aforesaid in the said 12 Teatro Nacional, wherein and whereby the said Henry E. Abbey purported, in consideration of a certain sum of money, to admit the holder of said ticket to said opera or concert; by which false making the said Henry E. Abbey was purported to be bound and affected in his property, and by which false making an obligation on the part of said Henry E. Abbey, to admit the holder of said ticket to said opera or concert was purported to be created.

And that thereupon the said George Benson, *alias* Charles Bourton, *alias* Meyers, sold said ticket to a certain person in the City of Mexico, who thereupon paid to said George Benson, *alias*

Charles Bourton, *alias* Myers, the consideration 13
demanded by him for the same.

That by said false making and forging as aforesaid,
divers persons then and there residing in the
City of Mexico, and the said Henry E. Abbey,
were prejudiced in their rights and property.

And the said Juan N. Navarro, in his official capacity
as Consul General at the Republic of Mexico,
for the United States of America, further charges
that said George Benson, *alias* Charles Bourton,
alias Meyer, did on or about the first day of December,
1886, at the City of Mexico, within the jurisdiction
of the Republic of Mexico, commit the
crime of forgery and of uttering of forged papers, in
this, to-wit : 14

That heretofore, and in the year 1886, one Henry
E. Abbey, of the city of New York, was, and still
continues to be, engaged in the business of manager
of theatrical and operatic and concert troupes
and companies ; and that at the times hereinbefore
and hereinafter stated, one Marcus R. Mayer, of the
city of New York, was employed by the said
Henry E. Abbey, as his agent in the said business
so carried on by said Abbey as aforesaid. And that
at the time above stated, in the City of Mexico, in
the Republic of Mexico, there was and still continues
to be a certain theater known as the "Teatro
Nacional;" that in the month of September, 15
1886, said Henry E. Abbey engaged said theater
for one month, from the fifteenth day of December,
1886, for the purpose of giving a series of
concerts and operas ; and on or before the first
day of December, 1886, had deposited the sum of
Five Hundred Dollars on account for the rent of
said theatre for the period stated ; and on or before
the first day of December, 1886, an announcement
and advertisement of the giving of
said concerts and operas under the management of
said Henry E. Abbey, at the said theater had been
made by the said Henry E. Abbey in the newspa-

16 pers of the City of Mexico, in the Republic of Mexico, as aforesaid.

And that thereupon the said George Benson, *alias* Charles Bourton, *alias* Meyer, late of the Republic of France, on or about the first day of December, 1886, at the City of Mexico, within the jurisdiction of the Republic of Mexico, did commit the crime of forgery and uttering forged papers in that at the time and place aforesaid, the said George Benson, *alias* Charles Bourton, *alias* Meyer, with intent to defraud said Henry E. Abbey, said Marcus R. Mayer, as agent of said Abbey, and said Marcus R. Mayer, and certain and divers persons then and there residing in the City of Mexico, 17 in the Republic of Mexico, and the public of the city of Mexico, did fraudulently, feloniously, wickedly and falsely, make and forge, and utter, knowing it to be forged, an instrument or writing purporting to be the act of another, by which certain rights and property were purported to have been created; in that at the time and place aforesaid did falsely make and forge the name and signature of said Marcus R. Mayer as the agent of said Henry E. Abbey, to a certain ticket of admission to one of said operas and concerts about to be given as aforesaid in the said Teatro Nacional, wherein and whereby the said Marcus R. Mayer, 18 as agent of said Henry E. Abbey, purported in consideration of a certain sum of money to admit the holder of said ticket to one of said operas or concerts; and by which false making the said Marcus R. Mayer, as agent of said Henry E. Abbey, the said Henry E. Abbey and the said Marcus R. Mayer were purported to be bound and affected in their property; and by which false making and forging an obligation on the part of said Henry E. Abbey, the said Marcus R. Mayer, as agent of said Henry E. Abbey and said Marcus R. Mayer to admit the holder of said ticket to said opera or concert, was purported to be created. And that thereupon the said George Benson *alias* Charles Bouton *alias*

Meyer, sold said ticket to a certain person in the 19
City of Mexico, who thereupon paid to him the consideration demanded by him for the same.

That by such false making and forging as aforesaid, divers persons then and there residing in the City of Mexico, and the said Henry E. Abbey, Marcus R. Mayer, as agent of said Abbey, and Marcus R. Mayer, were prejudiced in their rights and property.

And this complainant further says, on information and belief, that said George Benson *alias* Charles Bourton, *alias* Mayer, now stands charged in said Republic of Mexico (and this complainant charges him) with having committed the crimes of
forgery and the utterance of forged papers within 20
the jurisdiction of said Republic aforesaid; and that since the commission of said crimes said George Benson *alias* Charles Bourton, *alias* Meyer, has fled from said Republic of Mexico, and is seeking an asylum in the United States of America, where he may be found.

And this complainant further says that his information and belief concerning the said commission of said crimes by said George Benson as aforesaid, is based upon certain telegrams which he has received from the Governor of the Federal District of Mexico, and Inspector of the Police of the City
of Mexico, and others, copies and translations of 21
which are hereunto annexed and made a part of this complaint. Also from statements made by Henry E. Abbey and Marcus R. Mayer, of the city of New York, to complainant.

This complainant, referring to the treaty of extradition between the United States of America and the Republic of Mexico, of December 11, 1861, therefore prays that a warrant may be issued to apprehend the said George Benson *alias* Charles Bourton *alias* Meyer, and forthwith bring him before you or before the Judge or Commissioner in said warrant to be named, to the end that the evidence of his criminality may be heard and

22 considered, and that if on such hearing the evidence be deemed sufficient to sustain the charges under the provisions of said treaty, the same may be certified to the proper executive authority; that a warrant may issue for the surrender of said criminal, and that such further or other steps may be taken as may be in accordance with law and the provisions of said treaty.

Dated at New York, January 20th, 1888.

JUAN N. NAVARRO,
Mexican Consul General.

23 Subscribed and sworn to before me this 20th day of January, 1888, by said Juan N. Navarro, as Consul General of Mexico in the United States of America.

SAMUEL H. LYMAN,
U. S. Commissioner,
Southern District, New York.

COPIES OF TELEGRAMS.

No. 1.

"MEXICO, Jan. 12, 1888.

"To JUAN N. NAVARRO,
24 "Consul de Mexico.
"En New York, 251 W. 44.

"Mr. Abbey avisa aprehension Mayer, Gobierno "remitira demanda de extradicion, entretanto pro- "cure supermanencia en prision.

"J. CEBALLOS."

Translation of above.

MEXICO, Jan. 12, 1888.

To JUAN N. NAVARRO,
Consul of Mexico at New York,
251 W. 44.

Mr. Abbey has notified us of Mayer's arrest. The

Government will send petition for extradition, meanwhile try to detain him in prison. 25

J. CEBALLOS.

Copy.

No. 2.

" MEXICO, Jan. 17, 1888.

Senor JUAN NAVARRO,
Consul de Mexico, 251 W. 44.

" Documentos que exije tratado. Salierire hace " tres dias testigos no exije. 26

" J. CEBALLOS."

Translation.

MEXICO, Jan. 17, 1888.

Mr. JUAN NAVARRO,
Consul of Mexico, 251 W. 44.

Documents required by the treaty left here three days ago ; no witnesses required.

J. CEBALLOS.

27

Copy.

No. 3.

" MEXICO, Jan. 17, 1888.

" Doctor JUAN N. NAVARRO,
" Consul Mexicano, 251 W. 44.

" Hace tres dias Senor Mariscal remitio a nuestro " ministro en Washington documentos en forma " judiende extradicion del falso Mayer.

" J. CEBALLOS."

28 *Translation.*

MEXICO, Jan. 17, 1888.

Doctor JUAN N. NAVARRO,
Mexican Consul, 251 W. 44.

Three days ago Mr. Mariscal sent to our minister at Washington documents, in proper form, asking for extradition of the false Mayer.

J. CEBALLOS.

Copy.

29

No. 4.

"MEXICO, Jan. 17, 1888.

"Mexican Consul, 251 W. 44.

"Romero pidio ya extradicion de Meyer y hace
"tres dias fueron las penebas que exije el tratado,
"no testigos.

"MARISCAL."

Translation.

MEXICO, Jan. 17, 1888.

30 Mexican Consul, 251 W. 44:

Romero has already asked for the extradition of Meyer, and the proofs required by the treaty left here three days ago; no witnesses.

MARISCAL.

The President of the United States to any Marshal or Deputy Marshal of the United States: 31

Whereas, complaint has been made under oath by Juan N. Navarro, consul general of the Republic of Mexico, at the city and Court of New York, to the undersigned, a Commissioner in the United States for the Southern District of New York, duly appointed as such, and authorized to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign country, under a treaty or convention between the United States and any foreign government, charging George Benson, *alias* Charles Bourton, *alias* Meyer, late of the Republic of France, who, 32 as is alleged, is seeking an asylum within the United States, wherein he may be found, with having committed the crime of forgery and the utterance of forged papers within the Republic of Mexico, which crimes are enumerated and provided for by the treaty or convention for extradition between the government of the United States and the Republic of Mexico, and which crimes are particularly specified and set forth in said complaint.

Now, therefore, you are hereby commanded to apprehend the said George Benson, and forthwith to bring him before the undersigned, in the United States Court and Post Office building, in the city of New York, to the end that the evidence of the 33 criminality of the said George Benson may be heard and considered, and that, if on such examination the evidence be deemed sufficient to sustain said charge under the provisions of said treaty or convention, the same, together with a copy of the testimony taken, be certified to the Secretary of State, that a warrant may issue for the surrender of said George Benson pursuant to the said treaty or convention, and that such other or further steps may be taken as may be in accordance with law under the provisions of the said treaty.

In testimony whereof, I have hereunto set my

34 hand and seal this 20th day of January, A. D. one thousand eight hundred and eighty-eight, at the city of New York.

SAMUEL H. LYMAN,
a Commissioner of the United States,
duly appointed by the Circuit
Court of the United States for the
Southern District of New York,
and duly authorized by said Court
[SEAL.] to act as Commissioner under the
laws of the United States concerning
extradition of fugitives from
justice from a foreign country,
under a treaty or convention be-
35 tween the United States and any
foreign government.

In the Matter

of

The application for the extradition of George Benson, alias Charles Bouton, alias Mayer, under the provisions of the Treaty of Ex-
36 tradition between the United States and the Republic of Mexico of December 11, 1861.

The said George Benson having been brought before me pursuant to the order of arrest issued upon the complaint of the Consul General of the Republic of Mexico, at the city of New York, Juan N. Navarro, Esq., under oath, and a hearing had touching the matters alleged against him; and after a full and fair examination of the law and the facts in the case, I find that the evidence produced

37 against the said Benson is sufficient in law to justify his commitment for the crime of forgery for the purpose of being delivered up as a fugitive from Justice to the Republic of Mexico, pursuant to the provisions of the said treaty.

Wherefore, I have committed the said Benson, pursuant to the provisions of said treaty, to the custody of the United States Marshal, to be by him held in the proper jail until a warrant for the surrender of the said Benson shall issue according to the stipulation of the said treaty, or he shall be otherwise dealt with according to law.

And I do further certify that the annexed papers are a complete copy of the records of all the proceedings had before me in the above entitled matter. 38

In testimony whereof, I have hereunto set my hand and seal at my office in the city of New York this fifteenth day of February, A. D., 1888.

[L. S.] SAMUEL H. LYMAN, [L. S.]
U. S. Commissioner duly appointed to execute chapter 66 of the United States Revised Statutes relating to extraditions.

39

40 REPUBLIC OF MEXICO, by JUAN N. NAVARRO, Consul General,

against

GEORGE BENSON.

Before Samuel H. Lyman, Esq., U. S. Commissioner.

NEW YORK, January 14, 1888.

Present—The Commissioner.

S. MALLET-PREVOST, Esq., and DELANCEY NICOLL, Esq. } for Complainant.

41 FRANKLIN BIEN, Esq., for the Prisoner.

PETER MITCHELL, Esq., of Counsel.

Hearing adjourned for examination to January 20, 1888, 10:30 o'clock, A. M.

NEW YORK, January 20, 1888.

Hearing pursuant to adjournment.

Present—The Commissioner, Prisoner and Counsel

Messrs. NICOLL and MALLET-PREVOST for the complainant. 42

Messrs. MITCHELL and BIEN for the prisoner.

Mr. NICOLL states that he has an amended complaint, and asks leave to have a new warrant issued thereon, and consents to the discharge of the prisoner on the old complaint.

Mr. MITCHELL—I consent to the discharge of the prisoner on the old warrant, and I object to the issuance of a new warrant upon the new complaint produced, on the ground that the complaint is defective in form and substance, and fails to set forth the alleged forged instruments, and also fails to account for their absence ; and further it does not set forth a complaint in proper form to make out the crime of forgery under the common law. 43

The Commissioner discharges the prisoner under the old warrant.

The Commissioner examines the amended complaint submitted by the prosecution, and issues his warrant thereon.

The prisoner is again arrested and brought before the Court.

Mr. Mitchell.—I want to make a formal motion for the discharge of the defendant from arrest on the warrant issued under the new complaint, on the ground that the complaint is defective in form and substance, and does not set forth the crime of forgery under the requirement of the rules of pleading under the common law. 44

Motion denied ; exception taken.

The prosecution state that they are now ready to go on with the examination which the prisoner demands.

WILLIAM THOMAS PRITCHARD, called on behalf of complainant, being duly sworn, testifies as follows : 45

Direct examination by Mr. Nicoll :

I reside in the City of Mexico, and have for about twenty-two years. I resided there in the months of November and December, 1886, at No. 15 Primeria Riveria de Santa Maria. There was at that time in the City of Mexico a theatre known as the Teatro Nacional, in Diagana street. I look at the prisoner here ; I observe him. I saw him in Mexico about the beginning of December. 1886, in the National Theatre, right in front of the ticket boxes, where

46 they sell the tickets. I was there to buy tickets
for the Abbey-Patti concerts. I went there to buy
tickets for the Abbey-Patti tickets—opera, I should
say, or concerts ; to be more express, the Abbey-Patti-Scalchi
tickets. I had seen a notice in the
newspapers of the sale of the tickets. I went
to the Teatro Nacional in consequence
of this notice. When I arrived at the Teatro Nacional
I entered to go to the tickets, where they
were selling. I entered the entrance to what they
call there the *portia*, to go to the ticket office. To
the ticket office of the theatre It is in the second
entrance—the second portal ; there is an outside
front, and there is a second front, and the ticket
47 office is in the second. I went close to the ticket
office. I saw the defendant there. Right close to
where I stood in the front of the ticket office, talking
with a man named Zarate, who was his interpreter
and secretary. During the time that I was
present the sale of tickets was going on all in a
rush ; people couldn't get them fast enough. The
tickets were being sold at the box office, and by the
speculators in front of the box office, out of the box
office, right in front, right around where we stood.
I say I saw him standing by the box office. At the
moment I saw him there, and saw the tickets, he
was talking to this man Sarate, who had been an
48 old clerk of mine, and what he said I could not tell
you ; but they spoke there, and Sarate saluted me,
and said, "Are you going into the opera?" I
said, "Yes, I have just bought some tickets here
at three or four times what you sold them to the
speculators for." I saw tickets being sold at the
box office of the theatre. I saw money being
passed into the box office, and I saw
tickets coming out in exchange for the money.
I bought tickets to go to the Abbey-Patti concerts,
and nothing else and nothing more. I did not get
in to the Abbey-Patti concerts on those tickets. I
have not the tickets with me that I bought. They
were all given up to some Court there, I don't re-

member the name. To a Court in Mexico, or to some official of the Court. I gave mine up to an official in the City of Mexico. That is the reason I cannot produce them. 49

HENRY E. ABBEY, called on behalf of plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Nicoll:

I reside in the city of New York, and in the year 1886 it was my residence. In the year 1886, I was manager of theatrical and operatic entertainments 50 and concerts. My engagement in that business lasted during the year 1886, and I am still engaged in the same business. In the year 1886, I was engaged in giving a particular kind of entertainments or operatic concerts. The Adelina Patti Concert Company—"The Operatic Concert Company" is the style of it. I was manager and proprietor of that company. I gave different concerts and entertainments of an operatic character in various places in the United States during that year. In the summer or autumn of 1886, I made arrangements for giving a series of concerts or operas wherein Mme. Patti was to sing at the City of Mexico. 51 I engaged a theatre in the City of Mexico for that purpose—the Theater National—for one month, from the 15th of December to the 15th of January, 1887. Mr. Mayer made the arrangements, as my agent, through Mr. Orrin, in the City of Mexico. Mr. Orrin is manager of the circus in the City of Mexico. I believe he resided in the City of Mexico at that time. I had authorized the deposit of $500; I had authorized the payment of the sum on my account; I subsequently paid that sum on account of the rent of the theatre for the period stated. On or before the first day of December, 1886, I had not au-

52 thorized an announcement of the giving of said concerts and operas in the City of Mexico; I had authorized an announcement in the newspapers—not an advertisement, only an announcement of the giving of such concerts at some time; I authorized Mr. Mayer, my agent. I look on the prisoner Benson; I saw him in the year 1886 first on the steamship "Umbria" on the arrival of the steamer in this port with Mme. Patti and members of the company and myself on board; I had never seen him before that to my knowledge; I had conversation with him that day, but not on the steamer, I think; he was introduced to me on the tug which conveyed our party from the steamer, I don't remember by whom, 53 by the name of Charles Bourton. He said he was a representative of the Paris *Figaro* and *Gil Blas* (I think that is the paper, the *Figaro* I am sure of), and the London *Referee*, and that he would call upon me the next day, with my permission, to have an interview for these papers, I said "Very well," and appointed the hour of one o'clock at my office in Broadway. That is all I remember of the conversation I had with him on the day of my arrival; I next saw him on the following day, Monday, at one o'clock, at the time appointed, at my office; I had conversation with him then; he was taken into my private 54 office, and he asked me a number of questions relative to the manner of conducting the advance of my entertainments, by advance I mean Mr. Mayer's journey, who goes in advance of the entertainments; it was with regard to the duties of my advance agent; he said that that matter had never been thoroughly covered in an original paper, and he was very anxious to write a letter on that point; I gave him what information I could; he asked questions how far in advance Mr. Mayer was in the habit of going, and what his duties were when a got into a town; I informed him in rough—in as short a way as possible; the information I gave him was principally about how far he went in

advance, and whether he sold the tickets or not; I 55
stated the time of the advance to be about two weeks; as to the duties of the advance agents, I told him in that respect that he had charge of the tickets of the advance sale of the tickets and the advertisement, for the sale sale of tickets, and for the performance—for the date of performance; this interview was 15 or 20 minutes; as a matter of fact, this agent had the power, the right, to engage places; I do not recollect whether I told him anything about that or not; I had a conversation with him as to the places where I was going to give operas and concerts during that season; I told him where I was going to 56
give my entertainments; I gave him what we call the *route;* that route included the City of Mexico; I know what theatre I had engaged in Mexico; whether I told him or not, I can't say. I have now told the substance of the conversation that I had with him at that office, on the day following my arrival in this country. I next saw him on the stage of the Academy of Music; that was on the Saturday afternoon of our second concert, the second and last concert at that time in New York; the 24th of November, I think, he made an application to me for a pass to the theatre. At the time of his interview in the office, I gave him a pass, in my own handwriting; I believe either "Pass one," or "Pass 57
two"—"Academy of Music, Pass one" (or two), giving the date, wich, I think, was November 24, and signed my own name, "Henry E. Abbey." This was on a piece of paper; I think I wrote it out myself. I handed him the paper, and he took it away with him. I saw him on the stage in the afternoon. I simply said. "How do you do?" I did not see that pass again at any time; I never saw it among the passes that were returned from the box office at the Academy, I would have no opportunity; I very rarely see those things. That was the last time I ever saw the defendant until I saw him recently, in Inspector Byrnes' office. I

58 have now stated, in substance, all of the conversation I had with him at any time, all that I can recollect. After that time I had no communication from the defendant, either in writing, telegraph, or orally. I left the city of New York en route for Mexico. We returned after we had advertised two concerts, we went to Boston and Philadelphia, I think, and then returned to New York, and gave some more—two or three, I don't remember which. We went to Boston and returned to New York and gave two or three more; then we left, giving concerts in Philadelphia, Baltimore, Cincinnati, Chicago, New Orleans, Galveston, and then to the City of Mexico. I had given the defendant my route in
59 the different places including Mexico with the dates. I went to the City of Mexico during that year nearer the end of the month; we were in El Passo on Christmas Day, and it was three days from there; so we must have arrived on the 28th; I met Mr. Mayer at El Passo on his return from the City of Mexico; he was coming back as I was going there; I did not write any letter, and deliver it to the prisoner, authorizing him to represent me in any way in the City of Mexico; I did not write any letter, addressed to the manager of the Theatre National, authorizing this defendant, under any name whatever, to act as my agent in the City of
60 Mexico; I did not give this defendant, in the course of my conversations with him, any oral authority to act as my representative in the City of Mexico; I did not, at any time, give any directions to any of my other agents authorizing them to empoly the defendant to represent me in the City of Mexico; I did not authorize this defendant to sign my name to any letter addressed to the manager of the Theatre National, or to any one else in the City of Mexico for any purpose whatever; I did not authorize this prisoner, or direct any one else to authorize this prisoner to issue any tickets to the Patti concerts in the City of Mexico, or to print any tickets for said concerts,

or to sell any tickets for said concerts, or to collect 61
money on the sale of tickets for said concerts; I
did not authorize this defendant, or direct any of
my agents to authorize him to advertise the sale of
tickets in the City of Mexico, or to perform in
any way or respect whatever any of the duties be-
longing to my advance agents, or any of my agents
in the management of my business. In all my
dealings with the defendant, I believed that he
was the representative of the papers, English
and French, which he stated himself to be;
and in the information which I imparted to him con-
cerning my business and my method of carrying
it on, I imparted it to him as the correspondent
of a paper; I issued to him the pass to one of my 62
performances in the city of New York on the same
account; I sold tickets in the City of Mexico and
authorized the sale of tickets for my performances
to be given there; I authorized Mr. Marcus Mayer
to sell them; the house had been sold before I ar-
rived in the City of Mexico; the first series was
sold before we arrived.

I have the tickets, or a sample, such as I used
in Mexico, (witness hands a ticket to counsel), that
is a *fac simile* of the ticket which I used in Mexi-
co for the Patti concerts during December, 1886,
and January, 1887.

63

Said ticket is offered in evidence and marked Defendant's Exhibit 1, January 20, 1888.

That signature on there is a *fac simile* of my handwriting; I had a partner at that time, J. P. Schoeffel; my business letters had a printed heading on them of my office and place of business, &c.; some were in my own name and some in the firms.

Re-direct examination by Mr. Nicoll:

I authorized Mr. Mayer to advertise the sale of my tickets in the City of Mexico.

64 Marcus R. Mayer, called on behalf of the complainant, being duly sworn, testifies as follows:

Direct examination by Mr. Nicoll:

I reside in New York City; I am a theatrical agent; in the year 1886 I was a theatrical agent, representing Mr. Abbey as a general business agent —business manager, during the whole of the year 1886 and the ensuing year, 1887; It was part of my duty as the general business manager of Mr. Abbey, to lay out the routes for Mr. Abbey's different companies: I recollect performances given by Mr. Abbey, called 65 the Patti concerts—performances; it was a part of my duty to lay out the route for those performances; to submit them to Mr. Abbey also for approval; in my capacity as general business manager for Mr. Abbey, I laid out a route for the Patti performances in the year 1886; it commenced in New York about the 18th of November, and then to Boston, Philadelphia, Baltimore, Cincinnati, Chicago, New Orleans, Galveston, City of Mexico, San Francisco and then East; I laid out the dates for the concerts to be given at these different places; I assigned to the performances in the City of Mexico, I believe, to the best of my knowledge and belief, between the 10th of Decem- 66 ber to the 15th of January, somewhere between that time they were to take place; I have been in the City of Mexico, and was there in December, 1886; there is a theater there called the Teatro Nacional; during the summer of 1886, on account of Mr. Abbey, I arranged for the lease of that theater, from the 15th of December, till the 15th of January, 1887, I think that was it—for thirty days; and on or before the first of December, I had authorized Mr. Orrin to make a payment on account of the lease of the theatre to be made; I subsequently repaid Mr. Orrin for his advance, on behalf of Mr. Abbey; I look at the prisoner Benson,

I have seen him before; I first saw him there, he 67
called at Mr. Abbey's office, 1254 Broadway; between the first of November and the 14th of November, 1886; I was in Mr. Abbey's office when he called; I had conversation with him at the time; I was sitting there, I believe, fixing up a little reception they were going to give Mr. Abbey and Mme. Patti, on their arrival from Europe. The prisoner came in and handed me his card—"Charles Bourton, Correspondent of"—I think the Paris Figaro, and Gil Blas, and the London Referee, and some other paper—printed card; and then told me he wanted full particulars regarding—that he was sent over—that he was sent over a few days pre- 68
vious, I think he said the steamer "Champaign," from Europe; and he had been sent over, and they wanted the full account of Mme. Patti's journey through this country—where she was going. So, as he was the Parisian correspondent, or European correspondent, I probably gave it to him a little more fully than I would a local man; and he went on talking for a while. He was very suave in his manner; and after talking for a while about giving the journey, and taking it down—making a memorandum of the same. My faith in the prisoner was shattered at one time. He got down the journey of Mme. Patti in the States, and he prepared journey of Mexico also, 69
the journey which I had arranged. The journey contained the cities I visited, the dates, and some of the theatres; yes, I think I mentioned all of the theatres. I recollect, when I was discussing that part of the journey which related to Mexico, something was said about the Teatro Nacional. I told him about the car we had engaged for her—the Patti car that the Pullmans had furnished that Mr. Abbey had engaged. I told him between what dates we would play there, and about the dates we would play there, the city and the theatre. And the operas she was to sing in there, and showed him a bill I had got out in the

70 city here, which we had advertised here at that time. The bill was up in the office there, and it mentioned some of the operas—portions of operas. I did not give him one of the bills. He could get one of them—we had a thousand of them hung around the city. I told him about the prices we charged there; and he asked me if they would be the same as they were in New York. I told him I thought they would be a little more, in Mexico on account of the long journey and the expense. He asked me about the *modus operandi* of our advance sales as we conduct them here in New York. We had then advertised the sale here—the sale of 71 seats here. I told him in detail just how I conducted the sale. I didn't tell him the place where the sale was in Mexico; but I told him we usually sold at the box of the theatres as we do in New York; after the due advertisement of the sales, I told him we generally advertised two weeks ahead here. I gave him all the details for the sale, and that generally took place a week before the performance. I am speaking now of the first conversation I had with the prisoner at my office in Broadway, Mr. Abbey being then on his way to this country, I gave a series of performances of Mme. Patti in the City of Mexico during the latter part of December and January, I took the theatre 72 from the 15th of December till the 15th of the following January. The reason why we did not give performances that year on the 15th of December, was we didn't know exactly what time we could reach there when we first engaged the theatre, so that we took a month's time and we thought of giving these few performances, and cover then within that time. I have now told all of my first conversation with the prisoner, as near as I can recollect. I had a subsequent conversation with him at my office in Broadway, he asked me something about the reception we were going to give her; he wanted to go down; but I gave him no invitation; I did not invite him; may faith was shattered and

I didn't care about him ; he asked for an invita- 73
tion to go down the bay to receive Mr. Abbey on
this occasion and Mme. Patti ; that I declined to
give him ; my faith being shattered ; I think that
was all the conversation I had with him on that
occasion ; he talked more about cabling ; that did
not tend to restore my faith ; I saw the prisoner
again after that ; the morning of the 13th or 14th
of November, 1886 ; on Sunday morning—a very
cold morning too—we were going down the bay ;
the foot of Twenty-second street, I think the
steamer was ; he was aboard of that steamer ; and
he walked up to me and spoke to me and said he
wanted to have "a long talk with you sometime,
because I want to send a full account of your do- 74
ings over to my papers." And Mr. Miner, of the
Herald, was on my arm at the time ; and I says,
"Very well, I will see you to-morrow." But I
knew myself at that time, that I was going to
Philadelphia to-morrow ; as soon as we got down
to the Cunard steamer, I think it was the "Um-
bria," we went alongside of her, and it was blow-
ing very hard ; I am not a nautical man enough to
know whether it was the windward or the leeward
side ; but we went alongside of the steamer, and
smashed up alongside of the big steamer, and
broke the paddle box. Before the Custom House
officer who had a right to go aboard first, the pris- 75
oner was aboard—like that. (Snapping his finger).
And, I think, the only one. And then the captain
of the steamer ordered us around on the other
side. We got around on the other side in about
twenty or twenty-five minutes, and went aboard ;
and we met at last, and took Mme. Patti and Scal-
chi and Nicolini off the steamer ; the prisoner was
there talking with Mme. Patti ; so he got aboard
with the rest of them, and we went down in the
cabin ; Mme Patti went down there ; I introduced
the gentlemenly members of the press who were
there and wanted to be introduced to Mme. Patti ;
they were interviewing her ; he came to me and

76 asked me to introduce him to Mr. Abbey; I said, "Yes, that will be by and by—I will introduce you;" he went off; I went away again; and in about five minutes I turned ground, and he had Mr. Abbey in tow.

He was laying down the law to him: he was interviewing him very strong; I next saw the prisoner--he came up, I believe, either the next day, Monday or Tuesday, to the office, and asked for Mr. Abbey, and went in Mr. Abbey's private office; I had no conversation then with him; I saw him enter Mr. Abbey's private office and I saw him come out. And he said Mr. Abbey said he should have some tickets. Well, Mr. Abbey told

77 me to send him tickets. But I expressed my disfavor. So I told him I would send them to him that evening. I did send them to him; I mailed him two, to an address he left me on Clinton Place. And I got a letter back from him saying that I had sent him two seats for the matinee, instead of two seats for the evening. I wrote him a letter on our letter heads. He said that he must certainly have seats for the evening, because he wanted to cable it over to his papers. He didn't send me back the tickets though—the matinee tickets. So I wrote him a letter, and said I had no more tickets, but I sent him a pass for two—admissions. The first evening

78 of the concert, I think it was on the evening of the 18th of November, an old lady and gentleman came up with this pass. It was the only pass I had given out, and I refused it. I went to the door, and Mr. Senorini, Mme. Patti's personal agent, was there also. He asked me what it was, I told him that this was given to a young man that claimed to be correspondent for a Parisian paper, &c., and that it was the only pass I had given out, and I refused it. I asked these people—they were old people, and I was sorry to refuse them; but I had given it to Bourton and not to them. And Patti's agent said "Yes, a gentleman had called at the Windsor and seen Nicolini, and he had referred him to me." I

went back on the stage, probably half an hour 79
after, and the prisoner was there talking to the artists.
I asked him what right he had on the stage.
He claimed to be French—he could speak fluently
in different languages, French and Italian; and I
could understand the French, and he was talking
to the husband of Salchi, Count Lolli. I think that
was the last I saw of the gentleman. He disappeared
from my view at that time. That was the
night of the 18th, I think, of November. I next saw
him in a cell at Headquarters, recently. I left the
city of New York on the journey at that
time, on the first day of December, and went
with the Company to Philadelphia, and re-remained
there until that evening; Mr. Abbey 80
was along; and I left, I think at seven or
eight oclock that evening for Cincinnati; I think
the train was a little late, but it was about the
seven o'clock train, or the evening train—the Cincinatti
train. I was booked to leave on that evening
and consequently I left; I went over with the company,
and left. I went to Cincinnati. The next
morning I picked up the paper with this Mexican
swidle in; and Mr. Abbey telegraphed me to proceed
to Mexico at once. I went to Chicago with
my assistant, and left him there in charge, and
started immediately for the City of Mexico. I
think I arrived there on the morning of the 12th of 81
December—Saturday morning, I think it was.
When I arrived in the City of Mexico, I went and
called on the Governor—Governor Ceballos, and ascertained
from him in regard to this whole affair.
In consequence of my visit upon the Governor, I
looked around. On behalf of Mr. Abbey, directly
after that, I published a notice of the sale of tickets
for the performances to be given by Mr. Abbey. I
had a good deal of difficulty to contend with there
until I was vouched for; and if I had not been in
the charge of a friend of mine, my life would have
been in danger. I handed the Governor a dispatch
that had been received and handed me by Mr. Ab-

82 bey in New York, before I left here, which was addressed to Mr. Abbey at our office, 1,254 Broadway, which asked him: "What time will you be in Mexico? What time will the Patti agent be in Mexico?"; it was about the 29th day of November. And signed the manager of the Theater National; and to answer there. I went there, with this gentleman who had vouched for me, Don Pedro Vincon Cuiardo, who was ex-Mayor of the City of Mexico, and a very influential gentleman, he came on the train with me, and vouched for me to the Governor, and to the people generally there—which probably saved me. We spoke of the advertising —that the effect of this would hurt the concerts.
83 I saw these gentlemen, and also went up to the principal club, the Jockey Club. Next day I had a conference with these people, regarding the advisability of advertising this, and the prices of my proposed concerts. I had to take some advice from these gentlemen who were well known in the city. We could have charged $10, but for the people being fleeced like this, these people advised to make the prices less; they advised we should not charge it, and to make the prices $7.50 for the season, or for the bono, as they call it there, and $8 single. I advertised four concerts there, under their advice. I sold tickets for those concerts. The State De-
84 partment had instructed their Minister to see me, and he vouches for me. And the Bank of London endorsed me and I delivered all the money over; and I afterwards sold seats to a representative of the Government and the Bank of London, and remained there to show my good faith. I got a subpœna to appear before some Judge there; I don't remember what his name was; I went there and was examined. I ordered my advertisements in the papers The Governor gave me his private secretary to act as my secretary and to assist me, and he took me and introduced me to the printer there —the *Libro*. I got my printing out. He asked me if I wanted tickets printed. I saw the printer in

company with the Governor's private secretary, and 85
then I got my printing out. I advertised the actual operas that Mme. Patti would appear in, or portions of operas, and the prices agreed upon; opened booth sales. It is the custom in Mexico to open two or three sales, one for the people who have the right to purchase boxes. The theatre was built by the people, the citizens, and they have the right to buy the boxes, which are very much similar to our Metropolitan opera boxes; they are owned by these people, and they have no rights any more than that the manager is compelled to notice two days for them and let them buy them, if they wish, at the prices he fixes; they don't get any discount, 86
but they have a right to buy the boxes. That sale was opened, and then afterwards there was the season sale—a very good sale. It was superintended by the Governor. I conducted the sale of my tickets at the box office, Theatre National. As business manager of Mr. Henry Abbey, I did not at any time during the month of November or December, 1886, give this defendant, George Benson, alias Charles Bourton, a letter of introduction under the name of Mayer to the manager of the Teatro Nacional, in the City of Mexico, or to any other person in the City of Mexico. I did not, either orally or in writing, authorize this defendant to take any action as the advance agent of Mr. 87
Abbey, in the City of Mexico, in the month of December, 1886. I did not, either orally or in writing, under my own name, or under the name of Mr. Abbey by myself as manager, authorize this defendant to proceed to the City of Mexico to advertise the sale of tickets for the Patti concerts to be given under Mr. Abbey's direction. I did not authorize him in the way I have just stated to take possession of the box office, to sell tickets, to print tickets and sell tickets, and to receive money for the sale of tickets; I did not authorize him to sign the name of Mr. Abbey, or my name as mana-

88 ger, upon any tickets to be printed for these concerts; I did not authorize him to cause tickets with my name on as manager, or any part of my name as manager, or Mr. Abbey's name, or any part of his name as manager, to be printed in the City of Mexico for the sale of these tickets; I did not, at any time, either on my own account, or on account of Mr. Abbey, give the defendant authority, either orally or in writing, to perform any act of any kind whatever, as the agent of Mr. Abbey, or as the agent of myself as agent of Mr. Abbey's business; I never did; I never saw any pass presented signed by Mr. Abbey that had been sent to Benson; would have been more so—they would have been

89 more satisfactory if we could have charged a little more, which we would have done; we charged $7.50, or $30 a bono season; we might have charged $40 if we hadn't had this; because the people were so incensed, it deterred me, with the advice of these other people; there were subsequent performances given, besides the four I advertised, at $10—to show you we could have charged $10 from the start.

William Thomas Pritchard, recalled and examined by Mr. Mallet-Prevost:

90 I have testified that I saw the prisoner at the Theatre National, in the City of Mexico, sometime in the month of December, 1886; I saw the prisoner at another time subsequent to that, in the City of Mexico; to the best of my recollection, the following day—the day following the day on which I bought the tickets—at the office of the Hotel y Turbide, right at the foot of the staircase, in the doorway of the office of the hotel. I was presented to Mr. Mayer by Mr. Sarate as the agent of Abbey. I was presented to the prisoner—I don't remember under what name—but, to the best of my recollection, as Mr. Mayer; and he saluted me, and said,

"I am very glad to see you." I said: "I have just bought tickets," or, "I have bought tickets. for your concert." I don't remember what he said; anything particularly; it was just a matter of three or four minutes only. I think I might say the reason I was introduced was that his interpreter was an old clerk of mine in the Mexican National Railroad, and it was just that casualty that made me be presented—just in same way that I was presented afterwards to Mayer. He did not state that he was not Abbey's representative. He received me. The introduction was made by Mr. Sarate to Mr. Abbey's representative, and he saluted me, and I took it as such; but what word he used I don't remember; it was just one of these casual things. When I spoke of having the tickets, I said, "I am going to your concert, sir; I have got tickets." I don't remember what he said—"all right," or "very glad" or something; I can't tell you; I don't remember it—it was just what was common on such an occasion as that. I can say this; he was presented to me as Mr. Abbey's agent, and no objection was made by the prisoner. I know that the prisoner heard me, because he was looking at me, just as I know you are hearing me now. You may be deaf, Mr. Lyman, and may not hear me; but I presume you hear me, for you answer me, and direct your looks to me; he answered me something, but what he said I don't remember. There was some answer; the whole thing didn't last three or four minutes. 91 92 93

He made no objection. He didn't say, "I am not Mr. Abbey's attorney." Sarate is an old clerk of mine, and he said, "I am glad to see you here; let me present you to Mr. Abbey's agent." I said, "All right; I have got my tickets." I said that to both, in the hearing of both.

Hearing adjourned to Friday, January 27, 1888.

94 NEW YORK, January 27, 1888.

Present—THE COMMISSIONER; MR. NICOLL; MR. MALLET-PREVOST; MR. MITCHELL; MR. BIEN.

COL. JUAN QUINTAS ARROYO, called on behalf of complainant, being duly sworn, testifies as follows:

Direct-examination by Mr. Mallet-Prevost:

I reside at present in New York, at No. 100 West Fortieth street; I have resided in New York seven months; I was in the City of Mexico in the months
95 of November and December, 1886; it is my fixed residence, and I have been in the city of Mexico very nearly twenty years; there is a theater in that city, known as the Teatro Nacional; in the street of Vergaria; I saw the defendant in the City of Mexico in December, 1886; In the office for selling the tickets in the National Theatre; I was going to my business in the office of the Governor in Mexico, and I heard about the excitement to get tickets for the performance of Miss Patti; and through curiosity I came to the theatre to see the crowd that was asking for the tickets for the performances; and at the place I met a gentleman that was Chief of Police, General Carballeda; he
96 is the Chief of Police in Mexico; I was talking with Gen. Carballeda, because the gentleman in those days was intending to buy some real estate in Mexico, and he asked me to make the survey as engineer of the real estate; and I saw many people asking for tickets, and buying tickets in the office of the National Theater; and some moments after I left the gentleman to go home—some half an hour. I saw the prisoner at that time inside of the office that we call the "contabaria;" that means "office"—what we call the "pigeon hole" here, where we call for tickets in the vestibule; he was standing and talking to some other gentle-

men, I don't know inside of the office with 97
the prisioner some people were talking—I dont't know it was a little far from the place I was staying—and other gentlemen were selling the tickets ; I saw many people asking for tickets, and paying money for tickets ; the defendant was present at that time ; I don't remember what day it was that I was at the theatre. I remember when the Patti concerts were actually given—the real, but I don't remember exactly the dates, because at those days I was making my arrangements for coming to this country ; this occurrence took place about one month before they were given.

98

Mr. Mitchell.—I have no questions to ask, but I move to strike out the entire testimony of this witness as incompetent and irrelevant to prove the offense of forgery as alleged against this defendant in any sense—all with the exception of that which he has testified relating to the identity of the defendant, and having seen him in the City of Mexico at the time specified by the witness. The other testimony I move to strike out, on the grounds that I have stated—that it is incompetent, irrelevant, and immaterial to this issue. 99

Exception taken.

Mr. Mitchell.—At this stage of the proceedings, I move to strike out all testimony given by Mr. Abbey and Mr. Mayer, with the exception of that part which related to the fact of their not having appointed or authorized this defendant to act as their agent for the securing of the theatre, and the advertising done in relation to the Patti Concerts ; and also the fact that they gave him no authorization to sell tickets ; and all the balance of that testimony I submit is incom-

100 petent, and for that reason, I move to strike it out.

Motion denied; exception taken.

CHARLES A. HANLY, called on behalf of complainant, being duly sworn, testifies as follows:

Direct-examination by Mr. Nicoll:

I am a detective sergeant of police; I am connected with the Police Detective Bureau in this city, and I was connected with the Police Detective
101 Bureau in the month of December, 1887, and January, 1888; this month, I was detailed by the Inspector who has charge of that Bureau to make an arrest of this prisoner, Benson; the exact date I can't remember; I recollect the 12th day of January, 1888; I made the arrest of the prisoner upon that day; in company with me at the time were Detective Sergeants Adams and Killalee; I first saw the prisoner then, walking down Broadway; he was not alone; he was in company with a gentleman named Bien, Mr. Bien, his attorney; we accosted in Broadway, in front of the Stewart Building; we told him that he was wanted; we asked Mr. Bien the
102 gentleman's name; the defendant was right alongside of him?

By the Commissioner:

I know that I heard it; whether Mr. Benson heard it or not, I can't say; I think Mr. Killilee was between Mr. Bien and the prisoner; Mr. Adams spoke to Mr. Bien; Mr. Adams was standing in front of Mr. Bien; the prisoner was about two feet away from Mr. Adams; Mr. Adams asked Mr. Bien what was the gentleman's name, and he told him his name was G. M. Clinchwood; we said that was the man we wanted; and we requested him to come to police headquarters with us, informing Mr. 103 Bien where we were taking him ; and we went direct to Police Headquarters ; we allowed him to sit in the room there until two o'clock ; we took him to Court—Jefferson Market Court—and had him remanded back in our custody until the following day—until Saturday ; after that I had some conversation with him, at Police Headquarters; the conversation was introduced in regards to diamonds and different things; the prisoner said that he was aware now what the charge was, and that he didn't think that the offense that he was charged with was extraditable; I didn't see Mr. Abbey there until the next day ; I 104 spoke to him about the nature of the charge, as to what it was after we came from Court; we got a talking in regards to the matter in a general way; and he said that he didn't see how he could be extradited; that he hadn't committed the offense of forgery; that there was no name signed to the tickets; he authorized no one to sign any names to it; we asked him about a letter; he didn't know of any letter; and if it was where was it; and he said that he was informed that he was going to be prosecuted for bringing stolen money into the State, and he didn't see how that could be, because he couldn't see where the stolen money was; he admitted he had been in Mexico; he said he didn't 105 sell any tickets personally himself; but he spoke of the fact that there had been a fraudulent sale of tickets there; and that he had been in Mexico at the time; he said he had taken the proceeds of the sale; he said he took a package of money from the theater box office to his hotel—and a lot of silver that was in bags; he didn't tell me how he got out but he said he was in Mexico at eight o'clock that night, and he was on the train at half past four that morning; how he got there he didn't tell me; he said the last train left about half past seven at night; and at 4:30 the next morning he was on that train; he stated that he requested police protection

106 in conveying the money from the box office to the safe in the hotel; the letter—I had no conversation with him in regard to the letter; and I was only present when Mr. Killalee asked if there was any letter, and he said, "Where is it? Produce it." As to what became of the silver, he said he left it there. The following morning, after reading the account in the paper, I asked him: "How is it that you left $4,600?" I said: "Is that so?" He said: "Yes, I had to leave that, and my clothes also.

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107 THOMAS F. ADAMS, called on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Nicoll:

I am a detective sergeant of police, and was such in the month of January, 1888. I was detailed by the Inspector to arrest this prisoner. On the 12th day of January, 1888, I made the arrest in company with Detective Sergeants Hanly and Killalee, about opposite the main entrance of the Stewart Building, on Broadway, above Chambers street. Counsellor Bien was with the prisoner at the time. 108 I had followed the prisoner and Mr. Bien from his office—about Pearl street and Broadway, I think it is—and I came immediately in front of him on Broadway; and I spoke to Mr. Bien, and I says: "Mr. Bien, who is this man with you?" He said: "What do you want to know for?" I says: "Your name is Bien; I know you. I want to know who this man is with you." He says: "His name is Clinchwood." I says: "That is the man we want." And then, addressing the prisoner: "You will have to go to Police Headquarters. Inspector Byrnes wants to see you." The counsellor then said that he had to go to Court; if I would be kind enough to have the Inspector keep the

prisoner there for an hour or two before he went to 109
Court—that he would like to see him. When I went to Police Headquarters I made that request. But after leaving Mr. Bien, Mr. Hanly accompanied the prisoner from Chambers street up Broadway to Police Headquarters. It was a part of my duty after that to take the prisoner to the Jefferson Market Police Court. At two o'clock that day I walked with him to the Jefferson Market Police Court and back again. I accompanied him on the following Saturday. While in company with him, I had general conservation with him. First he asked me what complaint there was against him. I told him I thought it was forgery. He says: 110
"Where is the forgery? It isn't in existence." I said: "How about that letter?" He says: "Where is it? Let them produce it. I took good care to get that letter back." That was about all in relation to the letter. In a general way, he said his transactions in Mexico benefited Abbey more than they hurt him; he claimed that he had advanced the price of his tickets from six dollars to ten dollars. And in conversation with him in relation to Abbey's name upon the ticket, he claimed that Abbey's name was not on the ticket, but that some of the tickets were, as the best of my memory is, that they were endorsed "M. Mayer, per
P. C., Secretary." He claimed that the tickets 111
were not the same as the tickets that Abbey used here; they were upon different colored tissue paper, if I remember rightly, and the colors indicated the different sections of the house. They were of different colors—red and blue. And green, and yellow, and something; he named two or three of four colors, I forget just which. Indicating the different sections of the house. What was said, if anything, upon the subject of his study of the extradition laws. He claimed that he was familiar with the extradition laws between the United States and Mexico; and that while he may

112 have obtained money by false pretenses, he couldn't see the forgery.

Mr. Mallet-Prevost.—The testimony which we had expected from the City of Mexico, is not yet arrived; we have news that it is on the way; and expect to receive it in the early part of the next week. We would like at that time a few days to examine it, and to make translations in order to present them to your Honor; and we would, therefore, ask for an adjournment.

Mr. Nicoll.—Counsel proceeds to submit 113 the following as his reasons for his application:

The counsel alleges that he and his associate Counsel have acted with great diligence in the procurement of the necessary proofs to support the allegations of forgery contained in the complaint; and, as evidence thereof, submits the following to the Commisioner:

That the prisoner was arrested on the 14th day of January, 1888. That but 13 days have now elapsed since the defendant was arrested on the 14th day of January. That the prosecution have examined a number of witnes- 114 ses in the presence of the Commissioner, whose testimony tended to support the allegations of the complaint. That they have examined two witnesses who were in Mexico at the time of the commission of the offense alleged in the complaint; and that they have fully and overwhelmingly established the intent to defraud, which is one of the necessary allegations of the complaint. That they have proved by the admissions of the prisoner the destruction of one of the documents alleged in the complaint to have been forged by him. That immediately upon the arrest of the prisoner, or the next day after the arrest of the prisoner, counsel advised the Mexican Consul to telegraph to the Minister of Foreign Affairs in Mexico, asking him to send witnesses to be examined before the Commissioner. That a day or two afterwards a telegram was received in reply, stating that witnesses were not necessary, but that the documents required by the treaty "left here three days ago." The date of this last telegram was the 17th. 115

At the last hearing before the Commissioner, on the 20th day of January, 1888, counsel for the Mexican Government stated to the Commissioner the substance of their information concerning the condition of such proofs. That on the 19th, the day before the last hearing, counsel, with a view of ascertaining exactly what the documents dispatched by the Mexican Government did contain, in order that they might intelligently answer any questions of the Commissioner in that regard, caused to be sent, through the Consul-General, to the Prime Minister at Mexico, a dispatch in which they stated as follows (and as I am not familiar with the Spanish language, my associate will read it). 116

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Mr. Mallet-Prevost.—(Reading): "Counsel "request that I should advise you of the "charges which they have made against "Benson, in order to learn whether the proofs "which have been sent support these charges, "forgery of the signature of Abbey to the "letter addressed Moreno of the Theatre National, forgery and sale of tickets with the "signature of Abbey. They desire to have "as necessary (as indispensable) declarations "of Moreno and Oren in regard to the letter, "and of the printer, seller, and some pur-

118 "chasers of forged tickets, and some tickets "sold."

In answer to that came a telegram two days later, dated January 21st, from the Minister of Foreign Affairs, stating: "To-day the "proofs of forgery requested by your tele-"gram of day before yesterday left here."

Mr. Nicoll.—Now, in the meanwhile, we learned, and since the last adjournment, that the documents referred to in the telegram of the 17th had, in fact, been sent by the Mexican Government, as stated in that telegram, but that before they were used, the Consul-

119 General here was instructed not to use them, because they were intended to support an allegation of false pretenses, and not of forgery.

Mr. Mitchell.—I would like to have it appear that the extradition papers, as already sent by the Mexican Government, demanding that this defendant be handed over to that government, and referred to in the telegrams annexed to the complaint, are for false pretenses, and not forgery. I think it is due to this defendant that that should be on the record—that the record should contain that

120 fact.

Mr. Mallet-Prevost.—The Mexican Consul-General has received instructions from the Mexican Minister at Washington directing him not to present the extradition papers charging the prisoner with obtaining money under false pretenses; and stating further that a telegram was by him received from the Mexican Government, before the receipt by him of said extradition papers, advising him that extradition papers upon the charge of forgery had been sent, and directing him not to present the first extradition papers sent. 121

Mr. Mitchell.—I renew my motion for the discharge of the prisoner.

The Commissioner, after examining the authorities submitted, denies the motion.

Mr. Mitchell excepted.

Hearing adjourned to Saturday, February 4, 1888.

122

NEW YORK, February 4, 1888.

Present—THE COMMISSIONER, MR. NICOLL, MR. MALLET-PREVOST, MR. MITCHELL, MR. BIEN.

JOHN W. FOSTER, called on behalf of the prosecution, being duly sworn, testifies as follows:

Direct-examination by Mr. Nicoll:

I reside at Washington, D. C.; I was the Minister of the United States to Mexico from the year 1873 to 1880 continuously, and during that time I resided in the City of Mexico. I am a lawyer by profession, admitted to practice in the courts of the United States at Washington City. 123

Q. Are you familiar with the laws of Mexico, and the procedure in the courts of Mexico?

> *Mr. Mitchell.*—Objected to for this reason: The laws speak for themselves, and oral testimony never can be substituted for the written laws of any country or State; and, furthermore, that it is secondary evidence—not the first or best evidence of the fact.
>
> Objection overruled; exception taken.

124 A. I have familiarized myself sufficiently with the laws of Mexico for the discharge of my duties as minister to that country, or attempted to do so; but I never was a practicing attorney in Mexico. I was not admitted to practice in the courts of Mexico, but I became familiar with the laws and the statutes of Mexico in a general way when I was the minister of our government to Mexico. It was my duty as minister to sufficiently familiarize myself with the laws of that country to discharge my duties in connection with the extradition matters, and I was familiar, and am familiar, with the practice and laws of Mexico in relation to extradition proceedings between that republic and the United
125 States. I am a practicing attorney in Washington City, and as such am the legal adviser of the Mexican Legation; that is part of my professional occupation, to a reasonable extent, so far as my duties and investigations made it necessary. I have since the time I was Mexican Minister continued to be familiar, by reason of my being counsel to the Mexican Government, with the laws and statutes of Mexico and the practice prevailing in Courts of justice there.

By reason of my being for a number of years Minister to Mexico, resident in the City of Mexico, and subsequently counsel to the Mexican Govern-
126 ment in that city. I have made myself familiar with the laws and practice relating to the authentication of documents to be used in extradition cases under the treaty between the United States and Mexico.

I am sufficiently familiar for the purposes of extradition with the laws governing the admission of evidence in the tribunals of Mexico, for the admission of evidence for the purposes of issuing warrants to apprehend criminals.

And I am familiar with the law and practice prevailing in Mexico and its tribunals relating to the certification of copies of original depositions used in the tribunals of Mexico?

I ask the privilege of adding that I am not a practicing lawyer in Mexico; and the reason for giving an affirmative answer is that I made it my business as Minister in Mexico to sufficiently familiarize myself with the practice to discharge my duties as minister, which made it my duty to make such certificates. I do not claim to be an accomplished Mexican lawyer at all. I am ware of no change in the law and practice in the tribunals of Mexico in regard to extradition since I ceased to be United States Minister; I have recently made an examination of the law and practice; since this case arose I have examined the Code and the procedure of Mexico and I find the law to be similar to what it was at the time I was Minister in its general principles and practice; it does not appear to have been changed with regard to the certification of copies of original documents; t is the same with regard to the admission of evidence in the tribunals for the issuance of warrants for the apprehension of criminals as when I was Minister. 127 128

Direct-examination by Mr. Mallet-Prevost:

Q. Is this document properly authenticated?

Mr. Mitchell.—Objected to, on the ground that it appears by the question to be a copy of an instrument not properly authenticated; and, secondly, that it has not been marked for identification; and, thirdly, that it is irrelevant and incompetent, and not the best evidence of the fact which they seek to prove. 129

The Commissioner.—Objection overruled.

Exception.

Witness.—This document, purporting to be a petition from the Mexican government to the government of the United States, asking for the extra-

130 dition of the prisoner, is properly certified as a copy of its original, according to the law of Mexico, as it was in the year 1880, when I was Minister to that country.

I will mark the document Exhibit A for identification of this date.

Said paper marked Exhibit A for identification, February 4, 1888.

Q. Is this document properly certified as a copy of the original?

131 *Mr. Mitchell.*—I object to the question as incompetent, irrelevant, and not the best evidence on the subject, and further, that this witness is not competent to answer the question.

Objection overruled; exception taken.

Witness.—I am acquainted with the Spanish language sufficiently so as to read and understand the contents of that document; that document is properly certified as a copy of the original, according to the law of Mexico in 1880.

132 Mr. Mallet-Prevost produces another paper, which is marked Exhibit B, for identification, February 4, 1888.

(Exhibit B, for identification, shown witness.)

Q. Is this copy of a document properly authenticated?

Objected to, as incompetent, irrelevant and immaterial, and as not the best evidence on the subject; objection overruled; exception taken.

Witness.—This document, which purports to be a copy of a certain record in the Fourth Criminal

Court of the City of Mexico, containing certain depositions and declarations, is authenticated and certified as a copy of said original on record, according to the law of Mexico as it was in the year 1870. 133

The original of this document would have been admissible in evidence in the tribunals of Mexico, in the year 1880, for the purpose of being evidence against the prisoner for the crime of forgery, and for the purpose of issuing a warrant of arrest for said crime.

It would have been admissible in the tribunals of Mexico, in the year 1880, as evidence of the crime of forgery, for the purpose of issuing a warrant of arrest for said crime against the defendant. 134

> Mr. Mallet-Prevost produces another paper, which is marked Exhibit C, for identification, February 4, 1884.

Q. Are these documents properly authenticated?

> Objected to, as incompetent and irrelevant, and not the best evidence on the subject embraced in the question; objection overruled; exception taken.

Witness.—This document, purporting to be a copy of certain instruments and documents upon which a warrant of arrest, charging the present prisoner with the crime of forgery, was issued in the Republic of Mexico, would have been admissible in the year 1880 in the tribunals of Mexico as evidence of said crime, and for the purpose of issuing said warrant. 135

Also, the original, of which this document purports to be a copy, as also the originals of the other copies, would have been admissible in evidence in support of the crime of forgery, and for the purpose of issuing a warrant of arrest against this prisoner for said crime, in the year 1880, in the Republic of Mexico.

136 Q. Would these documents and tickets be admissible as evidence (in the Courts of Mexico), to prove the crime of forgery, or as ground of issuing a warrant ?

Mr. Mitchell.—I object to the question as incompetent. Your Honor will have to draw those conclusions ; and, furthermore, I do not see how this witness can decide what a Judge would have done upon the presentation of these in evidence, and the objection when made, if it had been made. Objection overruled ; exception taken.

137 *Witness.*—I think that the exhibits which are attached to this document, and which purport to be tickets of admission issued in the City of Mexico to certain operas and concerts in the Teatro Nacional, to be given in said theatre in the month of January of 1887, would have been admissible in the tribunals of Mexico in the year 1880 as evidence of the crime of forgery, and as a ground for issuing a warrant of arrest for said crime against this defendant.

I think that the exhibit which is attached to this document, and which purports to be a prospectus issued by Henry E. Abbey Company for certain operas and concerts to be given in the Teatro Nacional in the City of Mexico in the month of January,

138 1887, would have been admissible in the year 1880, in the tribunals of Mexico as evidence of the crime of forgery, and as a ground for issuing a warrant of arrest against this prisoner for said crime.

The certification upon this document, purporting to set forth that it is the original of a certain record existing in the Fourth Criminal Court of Mexico, is a proper certification according to the laws of Mexico as it was in the year 1880.

Same objection, ruling and exception to the question which called for the following answer.

Witness.—I make the same statement in regard to Exhibit A and B ? 139

Cross-examination by Mr. Mitchell:

Q. In the answers which you have given here, where you stated that certain evidence would have been admissible in Mexico in the year 1880, to prove the crime of forgery, were they based upon the fact that the word "falsification" appears in the original, and you assume and decide that to mean a charge of forgery—that that word means forgery, and nothing else ?

A. I do. In Spanish that is the proper interpretation, as I understand it, of the word "forgery." 140 As used in the Mexican Code, it is that.

Q. Do you mean to say that word is not used to apply to any other crime than forgery ?

A. I cannot say that it is not.

Q. As a matter of fact, is it not used to mean "false pretences" and "false tokens ?"

A. Not without other connecting words to qualify it.

Q. Is the word used as applied to those crimes ?

A. To answer authoritatively I would have to make a more accurate examination of the Code.

Q. Please do so as to false pretenses ?

A. I would have to make an examination of the Code more accurately to answer the question. 141

Q. When that word "falsification" is used as meaning in part forgery, is it not also used in connection with other words—other words as designating the crime of forgery ?

A. It was, and must necessarily be to define the precise act or offense.

Q. Then the word "falsification," standing alone, does not mean forgery alone in Mexican language, does it ? It does not mean forgery alone ?

A. It is susceptible of other meanings.

142 *Re-direct examination by Mr. Nicoll:*

Q. May it mean also false pretences?

A. It may, if the context justifies it.

Q. You are familiar with the treaty between Mexico and the United States?

A. I have read it frequently,

Q. And you are aware that the Spanish Treaty uses the word "falsification?" (Book shown witness.(

A. I am.

Mr. Nicoll.—I ask to have Article III of the Spanish Treaty marked in evidence.

143 Said Article III marked Exhibit E, February 4, 1888.

Witness.—I think probably a free statement will be intelligible to the Commissioner, and probably to the gentlemen on both sides. I do not want them to obtain the impreesion that I am assuming more than I know. As Minister, it became my duty to execute this statute which you have before you—as I did while I was Minister in the country. I was not educated as a civil law lawyer of the Roman or civil law, and had no acquaintance by practice with the Code of Procedure, with the procedure in the Courts of Mexico, and I had to acquire such knowledge by enquiry of Mexican law- 144 yers and by an examination of the Code, as would enable me to execute this statute. To that extent I attempted to master the subject, not for the purpose of becoming an accomplished Mexican lawyer —I did not have that in view—but as the Minister's duty. The present acting Minister is not an educated lawyer, but it is made his duty to execute that statute, and he comes as near to it as he can by such assistance as he can obtain; and although I had a little advantage possibly of the present acting Minister in having had a legal education in my own country, I acquired that knowledge with a little more familiarity, more readily than he possibly did, and I am simply using that as an illustration, and that is probably sufficient on the point during my residence as Minister. Since my residence as Minister I have been counsel to the Mexican Legation in Washington—not specially for such legal advice as I could give on Mexican law but for such assistance as I could give rather on any question that might arise; and I have given as the case came up such attention to Mexican legislation and Mexican law as I found it necessary. I have examined with some care the Mexican Code recently, and since this case came up I have looked over the Code with regard to forgery, and the provisions of the law on that subject. 145 146

By the Commissioner:

Q. Previous to that time—the time of your recent examination of the subject—what experience had you had, since you ceased to be Minister, in extradition matters?

A. None since I ceased to be Minister, except my general—

Q. In the way of advising the Mexican Legation at Washington?

A. None.

Q. This is the only case?

A. This is the first case that has arisen to which my attention was called. Extradition cases frequently arise that are decided, here and elsewhere, especially on the frontier, where they are decided without reference to the Minister. Under the provisions of the treaty, the judges of the Courts on the border have full power to decide. 147

By Mr. Nicoll:

Q. You have had Spanish documents, frequently, passing through your hands since you have been Minister?

A. Yes, frequently; it is due to the Commis-

148 sioner to say that I do not claim to be *an expert in Mexican law.*

By Mr. Mitchell:

Q. Nor the evidence in force there—the rules of evidence adopted there by their Courts?

A. Only in a general way; I have a general knowledge—I give this information mainly for your satisfaction.

By Mr. Mallet-Prevost:

149 Are not the Spanish documents constantly passing through your hands, and are you not familiar, and have you not been familiar since 1880, with the manner in which those documents are certified and authenticated?

Objected to as incompetent and irrelevant; objection overruled; exception taken.

A. Such documents do frequently pass through my hands; I claim to be familiar with the method of certification.

150 Q. And are those documents which have been handed to you, certified in the same manner as other documents which have passed through your hands?

Same objection; ruling and exception.

A. They are properly certified.

By the Commissioner:

As copies?

Q. As copies; each particular document requires its special—

By Mr. Nicoll:

Q. I ask you whether I am correct in my statement that copies of all documents that are filed in

Courts of justice are admissible in other tribunals 151
of Mexico—were while you were Minister.

Objected as incompetent; objection overruled; exception taken.

A. Yes.

Q. Did I understand you to say that the civil law prevailed in Mexico, and that was a practice obtaining in countries governed by the civil law?

Objected to as suggestive and leading, and incompetent; objection overruled; exception taken.

152

A. I suppose it is a sufficient answer for me to say that the civil law prevails in Mexico.

Q. I ask you whether or not the civil law still prevails in Mexico?

Objected to as incompetent; objection overruled; exception taken.

A. It does.

Q. I ask you whether or not you have had any experience whatever since you were Minister, by reason of any documents passing under your view, or by reason of any other investigation in pursuance of your general retainer from the Mexican 153
government to examine the laws and practice of Mexico—whether or not you have had any knowledge of the procedure in the tribunals of Mexico relating to the issuance of warrants for the apprehension of criminals charged with the crimes specified in the treaty, and whether or not of the law with regard to the authentification or certification of such documents as are filed in the tribunals of Mexico? On that enlighten us.

Objected to as incompetent; objection overruled; exception taken.

154 A. The answer requires two divisions; on the the first point I think I have already answered—that this is the first case of extradition that has been brought to my attention by the Mexican Minister; as to the second branch, I think I am quite familiar with the character—with the necessary character of documents, the authentication of documents, for admission in Mexican Courts, by my experience in the examination of various documents of that character; the Commissioner understands that that does not relate to the matter of extradition.

Q. Does it relate to criminal matters at all, or civil matters?

155 A. Mainly to civil matters.

Q. To some criminal matters?

A. I do not recall any criminal case, either of extradition, or of a criminal case under it.

Q. Is the practice the same in civil and criminal matters, in regard to the certification of documents.

Objected to as incompetent; objection overruled; exception taken.

A. I think there is no material difference in the matter of certification.

156 Hearing adjourned to Tuesday, February 7, 1888.

NEW YORK, February 7, 1888.

Present—The Commissioner, Mr. NICOLL, Mr. MALLET-PREVOST, Mr. MITCHELL.

IGNACIO ALIS, called on behalf of the prosecution, being duly sworn, testifies as follows:

Direct-examination by Mr. Mallet-Prevost:

I reside in the city of Chicago; and hold the

position there of Mexican consul; I have always been 157
practicing in Mexico as I am a lawyer for the whole
country. I was admitted to practice in 1856, in
the City of Mexico, and have continued to prac-
tice from that date up to the time that I left Mexi-
co; that was my occupation; I left there two
months ago; I have been Judge in the State of Mex-
ico, of the Superior Court of Mexico; I am famil-
iar with the practice in Mexico, and with the law
of Mexico regulating the certification of copies
of original documents; I am familiar with the laws
of evidence in force in the tribunals of Mexico; I
am familiar with the practice and laws of Mexico
relating to the admission of proofs in charges of 158
the crimes provided for by the Penal Code of Mexico;
I am familiar with the laws of Mexico regulating the
admission of evidence in the charge of forgery;
I am familiar with the laws of Mexico in regard to
the admission of evidence for the purpose of issu-
ing warrants of arrest for the apprehension of per-
sons charged with the crime of forgery; I am
familiar with the laws of Mexico relating to the au-
thentication of copies of original documents on file
in the Courts, or in any of the Register's offices in
Mexico; I am familiar with the laws of Mexico in
relation to the certification of copies of original
documents for the purpose of admitting those
copies as evidence in the tribunals of Mexico; I am 159
familiar with the law of Mexico relating to the ad-
missibility of certified copies of original documents
as evidence of the crime of forgery, and as a basis
for issuing a warrant of arrest against the person
charged with the crime of forgery.

Cross-examined by Mr. Mitchell:

Q. Have you read the Penal Code of Mexico recently?

A. Yes, sir; I have it always with me.

Q. Have you a copy with you?

A. Yes.

160 Q. Do you understand what the crime of forgery is ?

A. Forgery can be committed in different ways ; but the substance is a crime by which somebody endeavored to, or appropriated some money, or any other thing, by the ways that the law states, because there are several ways to make a forgery.

Q. Will you give the full definition of it as it applies to this proceeding ?

A. Forgery is an act by which somebody appropriates a thing under the different ways that the law states—and the law states about six or seven. I have the law here, by which all of them constitute the one forgery.

161 Q. Is that the best definition you can give ?

A. Yes ; that is the definition that the law gives. I will give the same definition that the law gives, if you like.

Q. Have you given it, or do you wish to give a further definition ?

A. No ; that is substantially the definition.

Q. Is that the definition, and the only definition, which you desire to be included in your answer ?

A. Yes.

Q. What is the mode of procedure in making a criminal charge against a person for forgery in Mexico ?

162 A. To go to the Judge, and to present the application to the Judge, of all the facts that I have stated are proof.

Q. Do you set forth all the facts in the complaint at the time, before the magistrate issues the warrant ?

A. What kind ?

Q. The kind of facts of the acts which constitute the crime ?

A. Yes.

Q. Do you set them forth in the complaint ?

A. Yes, before the Judge.

Q. Is that reduced to writing ?

A. Yes, to writing.

Q. And then do you sign it? 163

A. Yes.

Q. And are you then sworn?

A. No; according to the Mexican law, we are not sworn.

Q. You do not swear?

A. No; do not swear.

Q. You are not compelled to?

A. No, sir.

Q. You merely state it?

A. Yes.

Q. And have it set forth in writing?

A. Yes, sir; only we call it a protest, to say the truth.

Q. You do protest to say the truth? 164

A. Yes.

Q. That is similar to an oath?

A. Yes.

Q. It is binding on the conscience of the person that protests?

A. Yes, certainly.

Q. Now, there has to be an individual make that complaint, has there not?

A. Yes, sir.

Q. And his name has got to be attached to the paper?

A. The name of the person that makes the complaint. 165

Q. The name of the person that makes the complaint?

A. Must sign it.

Q. And he is the person that must be injured, if he complains, is he not?

A. Yes, the person or corporation, or the public defender of society.

Q. If a citizen parts with money or property by means of a forgery, and he should make a complaint to the magistrate or judge there, his name would have to be attached to the paper where the facts were written out, before the magistrate issued his warrant, would it not?

166 A. Certainly, yes.

Q. And if he had possession of the instrument which he alleged to be forged, whereby he parted with property of some kind, he would have to produce that instrument, would he not, to the Court?

A. Yes, he can produce it, but that is not necessary.

Q. The party that complains would have to produce that instrument?

A. If he wished to produce it; if not, he can reserve such document to produce it in the best time for him.

167 Q. According to the law of Mexico, that instrument must be set forth in words and figures in the complaint—in the written complaint—must it not?

A. No, sir; it is not necessary to attach the document directly in the complaint. You can produce in daylight the document, or you only have to produce the witnesses or other means to prove it.

Q. I will ask this question? I do not think you understand me?

A. I think I understand what you say, and I will explain: You believe that when any document is necessary to prove one crime, it must be attached precisely in the complaint.

168 Q. No; you do not understand. Is it not necessary, under the Mexican law, where a person makes complaint that they have been defrauded by means of a forgery, and they have possession of the forged instrument, that that forged instrument must be set forth in the complaint, when the complaint is reduced to writing before the magistrate who issues the warrant to apprehend the prisoner?

A. No, sir.

Q. Must it refer to it?

A. It must refer to it, yes.

Q. If it refers to it, it must refer to it as being attached?

A. No, sir. 169

Q. It must not?

A. No, sir; it is not necessary. Because, you know, it is afforded to the lawyer or counsellor to follow up the judgment, but it is not necessary to introduce the document directly.

Q. If the person who makes the complaint for forgery has possession of the forged document by means of which he parted with his property, when he makes this complaint to the magistrate, and before the warrant is issued, who takes possession of the alleged forged instrument, or what becomes of it?

A. If he produces the instrument, it will be filed by the Judge. 170

Q. It will be filed in Court, will it not?

A. If the party produces it.

Q. If the party produces it?

A. Yes.

Q. Does your practice admit of the party retaining it in his possession?

A. Oh, yes, sir; that is the choice of the party, to introduce directly the document, or to reserve it to be presented in the time proper for him.

Q. Must not the complaint specify the forged instrument?

A. I do not understand the question.

Q. Must not the complaint specify the forged instrument—say what the forged instrument is? 171

A. No, it is not necessary. He can prove it in any way, the forgery, and can retain the document, if he likes.

Q. Does he exhibit the forged instrument to the magistrate, or Judge, when he makes his complaint?

A. Yes, to show.

Q. He does?

A. If he wishes. If not, he will keep it for the proper time. I think it is the same question in another form.

Q. I ask you if a forged document must be pro-

172 duced by the complainant at the time that he makes a charge of forgery against a person, if the complainant has it in his possession?

A. I have answered, I think, about four times the same—that it is not necessary, but the choice of the party, to produce the document, or to take one other way of proof, because we have several ways of proving it.

Q. When the complaint is made in the criminal Court, and the magistrate issues his warrant, the written complaint is filed in the Court, isn't it?

A. Yes, sir.

Q. And according to the practice there, if they have cause to use the contents or state of facts em- 173 braced in that complaint, they make up a copy, do they not?

A. Yes, that is the practice, and is the law also in Mexico.

Q. When they want to use that copy in evidence in another Court or country, please tell us how they certify it as being a correct copy of the original?

A. When the copy is made, the Judge, and the secretary that acts as notary in our Courts, rectify the copy with the original.

Q. They compare it?

A. Yes. And when the Judge is perfectly aware 174 that this copy is entirely, literally equal to the original, in that case he gives that copy, and expresses that at the bottom of the document—that this is a copy of the papers that are filed in his Court.

Q. Now, after the Judge certifies that fact what is the next step taken?

A. To certify the signature of the Judge before the Secretary of Justice—that is, to say that this is the signature of this Judge, and he is a Judge, acting as such.

Q. That secretary, where is he? Is he attached to the Court?

A. No, sir.

Q. Where is he? Where is his office? 175

A. He is one of the members of the cabinet.

Q. Does the Judge put the seal of his Court to the document?

A. Certainly, yes, sir.

Q. Does any clerk of the Court or secretary of the Judge certify any further than putting the seal there?

A. No, sir.

Q. It is the Judge's act alone?

A. Yes, assisted by the secretary.

Q. Then the Sectary of Justice certifies that that Judge is a Judge of the Court from which the paper is taken or comes?

A. Yes, sir. 176

Q. Are there any other steps taken—any other steps to do anything to that instrument—before it is completed as an instrument of evidence?

A. Yes, sir.

Q. What else?

A. After the signature of the Secretary of Justice it is certified by the Foreign Affairs Minister.

Q. Minister of Foreign Affairs?

A. Of the foreign affairs of the country.

Q. What certificate does he put on?

A. That he knows that such person is Secretary
of Justice, and that signature that is at the bottom
of such a certification is his signature. And then 177
it is necessary to certify also this signature with the
Minister or Consul of the United States in the
place.

Q. Do those forms which you have spoken of have to be complied with before a paper would be accepted as evidence in one of the Courts of Mexico in the different States:

A. No, sir, it is not necessary, the certification of the Minister of Justice, nor of the Foreign Affairs Minister. The Governor of the State is the one who certifies the signature of the Judge, and that is all.

Q. The Governor of the State?

178 A. Yes, that is all.

Q. Does not the Governor of the State have to certify in case of requisitions being made on foreign governments?

A. No, sir—within his own State.

Q. You have two modes, then, of certifying to the Judges?

A. Yes; the different Judges of the States—if the party choose to certify the signature, good; but it is not necessary—the Judge can address directly to the other Judge, requesting him to fill such an order that he has issued, and that is all.

Q. Supposing that a paper was certified, which, so far as its certification was concerned, would be
179 proper in form to be received in evidence, you do not mean to say that that would entitle the contents to be put in evidence, if a Judge of a Court where it was offered admitted that the contents of it was incompetent, do you?

A. I don't understand very well your question.

Q. All certified papers, as you have described, would not be admitted in evidence, regardless and independent of their contents, would they?

A. Yes, it is admitted.

Q. Whether they were irrelevant or incompetent or not as to the facts stated in them?

A. Oh, certainly; suppose there has been an ex-
180 amination of some witnesses in one State, before one Judge——

Q. You do not seem to answer my question?

Witness.—Suppose witnesses have been produced before one Judge in one State, and these witnesses must be produced, and one judgment or suit is pending in one other State, before any other Judge; when these papers have been produced there they are perfectly receivable and taken as evidence in the case.

Q. Supposing that a lawyer made objection to the contents of the paper, do you mean to say that the Judge would admit it simply because it was properly certified, although it was not competent as evidence ? 181

A. Admit the paper for what the paper contains, and no further.

Q. He would admit the entire paper ?

A. Yes.

Q. No matter what it contains, as long as it was properly certified ?

A. Certainly.

Q. He would not rule as a Judge, then, on the competency of the evidence ?

A. He has nothing to do—the Judge to which has been presented such a paper—but to receive it as evidence in the case.

182

Direct examination resumed by Mr. Mallet-Prevost ·

Exhibit B, for identification, shown witness.

Mr. Mitchell objected to the admission of the following evidence as incompetent; objection overruled; exception taken.

Witness.—I have examined this document, which purports to be a certified copy of certain declarations and depositions made by various witnesses before the Fourth Judge of the Criminal Court of Mexico, and it is entirely according to Mexican laws; is properly certified according to those laws as a copy of the original documents on record in the Fourth Criminal Court of Mexico, so that it may be admitted as evidence of the crime of forgery in the tribunals of Mexico. 183

The document is certified in such a way as that it would be admitted by the tribunals of Mexico to sustain the charge of forgery.

Exhibits A, B and C, for identification, shown witness.

184 *Witness.*—These documents are properly and legally authenticated so as to entitle them to be received for the purpose of sustaining the charge of forgery and of issuing a warrant.

> *Mr. Mallet-Prevost.*—We offer these documents, Exhibits A, B and C, in evidence.

> *Mr. Mitchell.*—I object; first, on the ground that the records themselves are not properly authenticated; secondly, I object to the records being admitted in evidence upon the ground, that the witness, who was called as an expert, is not qualified to give 185 evidence as to the correctness of the certifications, in both the quantity and the quality of the evidence contained in those records. I further state in that objection, that he is incompetent to give such evidence as he has given. I object to the admission of the evidence on the ground, that they are defective in substance and in form to prove the crime of forgery under the Mexican law against this defendant; fourthly, I object to the admission of the records in evidence on the ground, that they have not been properly proved to be received in evidence, and are, therefore, incompetent.

186

Witness.—As regards the certification upon these documents, Exhibits B. & C., the signature of the Judge s the first, and then the Secretary of Justice, and then the Secretary of Foreign Affairs by the Chief clerk of the Foreign Affairs Minister; the signature "J. M. Yturbe," is the signature of the clerk; he signs with the judge. These are all the requirements for certification and authentication, and for making them competent evidence in criminal proceedings in the crime of forgery in the Courts of Mexico.

Said papers received in evidence, as ex- 187
hibies A, B and C.

Exception taken.

Mr. Mallet-Prevost produces translations of said Exhibits A, B and C.

It is admitted that said translations are correct translations of the documents just offered in evidence.

They are marked Exhibits B½ and C½.

Mr Mallet-Prevost.—The prosecution asks
for an adjournment, on the ground that they
have received notice from the Mexican 188
Minister at Washington that he has received
from the Department of State at Mexico,
additional documentary evidence, which
has been sent on especially for this case. The
prosecution have received notice that that
documentary evidence will arrive here to-
night or to-morrow, and they ask for time to
examine it, and, if necessary, to make tran-
slations; and we agree at the next hearing
to close the case.

Hearing adjourned to Saturday, February 11, 1888.

189

190 NEW YORK, February 11, 1888.

11 o'clock, A. M.

Present—THE COMMISSIONER; MR. NICOLL; MR. MALLET-PREVOST; MR. MITCHELL; MR. BIEN.

THOMAS W. PRICHARD, recalled and examined by Mr. Mallet-Prevost.

Mr. Mitchell.—I object to the following evidence as incompetent; the tickets which he purchased are the best evidence of that fact; he cannot give evidence by comparison; they are not lost documents; objection overruled; exception taken. 191

I have testified that I purchased tickets while in the City of Mexico, for the operas and concerts advertised to be given by the defendant; I examined the tickets which are now handed to me, and I state that these tickets are the same as the ones I bought.

Cross-examination by Mr. Mitchell:

I do not pretend to say that these are the identical tickets which I purchased; what I state is that this is the class and that is the same kind; the 192 same as that; similar in every respect; so far that I believe them to be the very tickets; some of those that were sold; a part, a portion of the tickets that were sold there by the defendant.

By the Commissioner:

Witness.—The tickets that I actually bought were handed into the Court, I can't remember the —it is one of the criminal Courts; I left them in possession of the authorities there; I think it was Gonzales' Court; I don't remember—I handed it into the Court.

THOMAS MORAN, called on behalf of the prosecution, being duly sworn, testifies as follows. 193

Direct-examination by Mr. Mallet-Prevost :

I reside in the city of Mexico, and was there in or about the months ot November and December, of 1886; there is a theatre there known as the Teatro Nacional ; I saw some advertisements in the City of Mexico, giving notice of the holding of certain operas and concerts in the month of January, 1887.

I have not those tickets with me; not here in New York; I purchased those tickets in the National Theatre a short time before the performances were to take place ; it is impossible for me to give the date ; I could not give the date even of the tickets I bought here of the theatres. 194

By the Commissioner :

Witness.—I saw tickets for sale to the Patti conserts that are in question ; that relate to this controversy ; I saw them there ; the tickets I saw there resemble the tickets that I see now.

By Mr. Mallet-Prevost :

Witness.—I could not swear that I have those tickets in Mexico, but they must be in Mexico ; as they were afterwards said that they were forged tickets, and they were no good ; I didn't have any more use for them. 195

> *Mr. Mitchell.*—I move to strike out what was said about forgery as incompetent ; motion denied ; exception taken.

Witness.—Those tickets which I purchased and for which I paid, were similar to the tickets which I have identified here.

> *Mr. Nicoll.*—We offer in evidence certain

196 depositions, taken in the City of Mexico on the 21st day of January, 1888, before the Inspector General of Police of the Federal District of Mexico, being the deposition of the printer referred to in the other evidence taken before the Commissioner, where the defendant had the tickets which he is charged with having forged printed; and we submit in addition to the document itself, the certificate of the American Minister residing in Mexico, to the effect that the documents submitted are legally authenticated so as to entitle them to be received in evidence in the tribunals of Mexico.

197 Upon objection being made, the Commissioner states, after examining the certificates, that it does not, in his opinion, conform to the requirements of the Revised Statutes.

(Said papers marked Exhibit F, for identification.)

Ignacio Alas, recalled and examined by Mr. Nicoll:

I look at the papers which you now show me and
198 state that they are legally authenticated so as to be received in evidence in the tribunals of Mexico for the purpose of issuing warrants to apprehend persons charged with the crime of forgery. It is written law, but it is necessary to look for it, I cannot say directly what is the law—I know the practice and the several points; but we cannot say at the first moment where is the law, and where is that point.

There is an unwritten law in Mexico, and a written law.

The unwritten law—what you call in this country, the common law or civil law; but we call it custom we have codes; there is a custom, or part of the civil law, that all original documents are filed in the offices or courts where they are presented ; that is part of the unwritten law ; it is a part also of the unwritten law, and the same custom, that copies of documents so filed and recorded are admissible in evidence in the tribunals of Mexico. 199

This evidence was objected to as incompetent ; objection overruled ; exception taken.

Witness.—Not only is it the custom, but there is also a written law for that, because the law, when it speaks of any of this kind of documents, speaks of the copies ; we call the original copies the first authority, and the first copy is the second authority ; but I say it is a part of the custom, or the unwritten law, as well as it is a part of the statute or code law, that copies are received in evidence in the tribunals of Mexico. 200

It is not only the custom, but it is also a part of the written law.

And it is a part of the civil law, and a rule of the civil law, and in force wherever the civil law prevails, in whatever country the civil law or the Roman law prevails.

(Hearing adjourned to 1.45 P. M., same day). 201

202 NEW YORK, February 11, 1888.
1.45 P. M.

Hearing pursuant to adjournment.

Present—The Commissioner; Mr. Nicoll; Mr. Mallet-Prevost; Mr. Mitchell; Mr. Bien.

IGNACIO ALAS' examination resumed by Mr. Nicoll:

(Book shown witness). The book which I hold
in my hand is a Codigo de Procedimiento Penales,
which translated means Code of Criminal Pro-
cedure; I look at page 19 of that book, and state
the authority by which the book purports to have
203 been issued; it means Minister of Justice and
Public Instruction; I state that the book which I
hold in my hand, and which I have described as
the Code of Criminal Procedure of Mexico, is a
book issued by the authority of the government of
Mexico.

It is admitted that the Code of Criminal Procedure and the Penal Code of Mexico went into effect and became operative only in the years 1879 and 1880 respectively.

Mr. Mitchell.—Objected to as incom-
petent; that this witness can not state
204 that fact; that it is not the best evidence
of the fact.

Objection overruled; exception taken.

Witness.—I can refer to the page wherein that appears; the page is not numbered, but it is between pages 18 and 6; article 230 of such code says: "Certified copies of such documents as may be 'be-"yond the territorial jurisdiction of the Judge or "Court before whom the case is pending, shall be "furnished upon application to the Judge of the "place where such documents are recorded." This comes under Chapter II, and is called "De la prueba Documental." Documental proofs. 205

~~*Mr. Mitchell.*—I move that the translation stricken out, and that it be translated and put in evidence.~~

~~Motion denied; exception taken.~~

It refers to crimes because it is the Criminal Code it refers to all crimes, including the crime of forgery.

Mr. Mitchell.—I object to it on the ground that the Code must speak for itself, and that this witness has no right to state the contents of it. 206

Objection overruled; exception taken.

Witness.—Yes I got that book from the Mexican Consulate.

Counsel for the prosecution offer the whole of the book in evidence.

Mr. Mitchell objected to the admissibility of the Code in evidence, on the ground that a foreign law could not be proved that way, and further, that a proper foundation had not been laid to admit of the admission of the Code as a foreign law; overruled; exception. 207

Witness.—The heading of the chapter under which the article which I have cited comes is Chapter II—"De la Prueba Documental"—Documentary Proofs; page 67; the chapter refers to documentary evidence in criminal cases.

Mr. Mitchell.—I object to the whole book; it is irrelevant and immaterial, and has no bearing on this case except so far as it relates to documentary secondary evidence, 208 that is, copies of original depositions filed in the courts of Mexico.

The Commissioner.—I will allow it.

Exception taken.

Mr. Mitchell.—I will put my objections separately. I object to the book being received in evidence, on the ground that it is in the Spanish language, and has not been translated or properly proved to be admitted in evidence as a foreign law.

Objection overruled; exception taken.

Mr. Mitchell.—I object to any part of it
209 being admitted in evidence, except that part that bears strictly upon the admissibility of copies of original depositions or judgements filed in the courts of Mexico; that the balance of the Code is irrelevant, and immaterial, and that it is incompetent to admit it as evidence.

Objection overruled; exception taken.

Said book marked Exhibit E. Feb. 11, 1888.

Witness.—I look at the book you now show me. (A book shown witness.) I have seen that book be-
210 fore many times; I received it to-day from the Mexican Counsul; that book purports to have been issued by the government, and printed in the government printing house.

By the Commissioner:

Witness.—This appears by the title page.

Mr. Nicoll—I offer that page in evidence in support of the declaration, and upon that I offer the book.

Mr. Mitchell.—I object to it as incompetent, as not properly proved to be the law of Mexico.

Mr. Nicoll.—I will offer the book, with the understanding that all we want is a portion of the book, and particularly certain pages. 211

Mr. Mitchell.—I object to it on the ground that it is in the Spanish language, and, secondly, that it is incompetent.

Objection overruled; exception taken; said book marked Exhibit F, February 11, 1888.

Witness.—The following is a true translation of Act 712.

212

"Authentic public instruments include all written instruments which, having the legal requisites rendering them serviceable as proofs, are issued by a notary public, or by any other person legally authorized so to do in the exercise of their public functions, such as administrative acts, proceedings, decrees, laws, and other resolutions of the legislature, administratives acts, resolutions, and other documents of the executive, authorized by the President of the Republic, or any one of his Ministers, by such person alone, or by some chief clerk and acts of city councils, their acts and those of the Electoral Courts."

213

Mr. Mitchell.—I move to strike that out, as incompetent, irrelevant and immaterial.

Motion denied; exception taken.

Witness.—I said that I was a Judge in the State of Mexico; and I exercised from time to time the various judicial functions attaching to my office. It was a part of my jurisdiction to act as Judge in criminal cases, and I have issued warrants in criminal cases, and I have issued warrants for the arrest and apprehension of criminals, and I must in the exercise of my

214 functions as Judge, issue warrants for the arrest and apprehension of criminals, upon copies of original documents, and I do not remember any one particular case, but it must be. I say I must perhaps have done it in such a case, but I do not remember now. But that is the practice; that is the practice prevailing in the Courts of Mexico.

To issue warrants for the apprehension and arrest of criminals upon certified copies of documents, I am familiar with the ordinary course of criminal procedure in Mexico for the apprehension of offenders. I have examined certain depositions which have been marked Exhibits A, B and C, and papers, such depositions would be used and received in evidence before magistrates or Courts in 215 Mexico the same as those are sought to be introduced here, such documents are admitted in evidence as a part of the procedure in the criminal courts. I consider myself perfectly familiar with the course of criminal proceedings in Mexico, and I consider myselt competent. The papers and documents and records which I have examined, and which are marked Exhibits A, B and C, forming a part of the proceedings in a Mexican Court, and referred to at the last meeting—are those according to the practice in Mexico, and they would be received in Mexico.

216 Mr. Mitchell objected to the following testimony as incompetent and irrelevant; objection overruled; exception taken.

Witness.—The practice in Mexico in regard to keeping the records in criminal cases, is as follows: All the depositions that have been made before the Judge and Secretary, are written by the notary that is attached to the Judge—to the Court; when the deposition is finished it is signed by the party—by the witnesses—by the Judge and by the Secretary; and when it is necessary to have any of these proceedings for any purpose, or for judgment or in a criminal case, the Judge issues one order to be made one copy—a literal copy—of the things 217 that are in the record filed—that are filed in the case; and this copy being duly certified, gives full evidence anywhere in the Republic.

> *Mr. Mitchell.*—I move to strike out the answer of the witness as incompetent; motion denied; exception taken.

Witness.—The depositions and declarations of witnesses which are taken in any proceeding in a criminal Court, are copied again in book form, and placed together, they form the record of the case, with such other proceedings as may be had; of every one of the cases is made one proper record, and 218 filed all together—the documents referring to it.

By the Commissioner.

Witness.—I have explained to you the method adopted by the magistrate in criminal proceedings; I cannot show you where the provisions of law covering this are; I cannot do it just now, because I have not my books with me, and I have only the few books that I can find in the Consulate; as the Mexican Consul is not a lawyer, he has not all the books that I will require to answer exactly every one of the questions that have been addressed to me; all these points are in the notary's regulations, and 219 I do not find these regulations among these books; they are published in separate books; these books that I speak of are in Mexico, I have them in Chicago.

> *Mr. Mitchell.*—I move to strike out all this testimony relating to practice and proceedure regarding copies of depositions being used in evidence in that country, as not applicable to the charge here; motion denied; exception taken.

By Mr. Mallet-Prevost:

Witness.—I look again at the paper you now

220 shown me marked Exhibit F, for identification (paper shown witness); I have examined it before; I state that this is so authenticated as to be admissible in evidence in the tribunals of Mexico, on applications for the arrest and apprehension of persons charged with forgery.

Said paper is offered in evidence; objected to.

Mr. Mallet-Provost.—This document purports to be a certificate of Louis G. Carbelleda, who is herein described as the Inspector-General of Police of the Federal District of 221 Mexico. It is like the other documents a copy of an original which is on record at his office; and the certificate incorporates a copy of a deposition alleged to have been taken before him, and made by one Timoteo Macais, a printer.

Said paper shown to witness.

Witness.—I examine this document and state that it is the certificate of the Inspector-General of Police of the Federal District of Mexico..

After being arrested, the criminal can take, or entitled to take, the first depositions, and then to 222 take them directly to the Judge—the depositions; this certificate of the Inspector-General of Police of the Federal District of Mexico, would be admitted in evidence in the tribunals of Mexico in support of the crime of forgery.

Said paper offered in evidence and admitted.

Objected as incompetent; objection overruled; exception taken.

Said paper is marked Exhibit F.

Translation produced, admitted to be correct, and marked Exhibit F-1. 223

Mr. Mitchell.—I object to part of it here, which is on page 10, and page 4 of the translation, as being conclusions, and not facts, and which reads as follows; "It being a "matter of public notoriety that he had "acted in every way with absolute and com-"plete falseness;" and I move to strike that out as incompetent.

Motion denied; exception taken.

By Mr. Nicoll:

224

Witness.—I look at the depositions, Exhibits A, B and C, which are marked in evidence. I look at the tickets which are annexed to that Exhibit C, noting the violet, the pink and the yellow. (Said exhibits shown witness.) I have stated that I am familiar with the law of Mexico; the custom law, the criminal law, the statute law and the law of contracts. I know a contract when I see it. I know what a contract is by the law of Mexico. I look at those tickets annexed to the exhibit, and I state that they are in the form usually adopted in Mexico for tickets of admission to the theatres and concerts. I know they are in the regular form in which they are issued in Mexico. 225

The following testimony was given under objection, which was overruled, and Mr. Mitchell excepted.

Those tickets on their face show the contract made between the public and the manager of the company—the company that were to give the performances. The law of Mexico on the question as to whether or not a theatre ticket in the usual form in Mexico imports a consideration of itself, is the law that regulates all

226 contracts—one contract as any other—the public pay such money to have such a performance; it is a contract as any other.

By the Commissioner:

Witness.—The matter of theatre tickets is not specially mentioned in the laws of Mexico; it comes in common contracts.

By Mr. Nicoll:

Witness.—It is governed by the law relating to contracts in Mexico. We report our cases in books in the tribunals in Mexico as you do here, but not 227 very carefully, because we do not have as authority the decisions that have been given by one Judge. The rule of *stare decisis* does not apply; it does not follow as a rule. The decision of one Court in Mexico has no authority with any other Court in Mexico, so as to be bound by them, so that they must follow it in another case. We have no special form for our contracts; we do not call it consideration; it is not necessary to express that by a consideration of such a sum received; in different ways we can say, and the contract is always good and valid. You can make a contract in Mexico without any particular words. Suppose that you 228 bought from me one horse, and you say: "I will give such money to Mr. Alas; he will deliver to me such a horse." That is enough; that is a contract, and valid, if there is nothing said in the contract with regard to any consideration in money If it is a donation, it would be obligatory also in some cases. I know what a promissory note is. I know that sometimes, and generally, that expresses a consideration. We make any promise in Mexico without expressing the consideration—if it is a donation—the meaning of the word donation is to give away a thing without any return from the other party. The promise to give something is enforceable in law. In some cases that are par-

ticularly appointed, it is revocable—the will of 229
giving such a thing, and in some others not.

By Mr. Mallet-Prevost:

Witness.—If a promissory note is made by a party promising to pay a certain sum of money to the bearer on a certain day, and that promissory note is made without any consideration, it cannot be enforced against the maker of the note. Your Honor will allow me to say that I came here only to express that the papers that have been introduced to the Judge are in legal form or not, and that they are admissible in the tribunals; but I
have never come now to show my instruction, or to 230
give instruction about the Mexican laws; because neither the lawyer that is now present nor the Judge is in need of my instruction. They know very well how to study, not only the Mexican law, but any foreign law that may come in the case. And it is awful embarrassing to not to be able to point directly to one law that it is perhaps twenty years since I have seen it, because I have not had occasion to see it again. As things come now, it is impossible to answer without one speech and explain the meaning of the law, and what is the difference that the law calls it when approaching such a case. If I do not do that, I will appear ignorant, or per-
haps a bad man—that I wished to help the Mexican 231
party. For that, I would like to beg the Judge to make the counsel put only the questions for which I came here—not every kind of questions. I have not come here either to assist the Judge or the lawyers.

Cross-examined by Mr. Mitchell:

I guess 25 or 26 years have elapsed since I was a Judge in any of the Courts in Mexico. I have never resided here, but only come for some business, and go back to my home in the City of Mexico. Just now I reside in Chicago, because I am

232 the Mexican Consul there. I have been in Chicago as Mexican Consul only two years and a half.

Mr. Mallet-Prevost.—We call your Honor's special attention to Article 397 of Exhibit D, which has been already offered and admitted in evidence, and which is the Code of Criminal Procedure.

Witness.—The following is the translation of the article: "Public instruments are sufficient proof "in themselves, saving always the right of the "parties to argue as to the falsity," (to prove them false, is the better term) "to prove them false," 233 (that is, those public documents false), "and also "to demand their comparison with the originals," that is to say, "the Protocol,"—that means the original—"with the protocol" (which is the original) "or with the originals existing in the arch-"ives."

It is agreed that the following is a translation of the articles and sections referred to in Exhibit A offered by the prosecution:

Article 701.—The forgery of the seal of a private person, or of a seal, mark, stamp or countersign of a commercial house, or of a private banking or industrial establishment, 234 shall be punished by major arrest, and by a fine of the second class. The same penalty shall be imposed upon him who uses said seals, marks, countersigns, or false stamps, upon him who employs the real ones on forged objects in order to made them pass as true.

Article 710, Section I.—The forgery of a document shall only be punished when it is committed in one of the following ways: First, by the placing of a false signature, even though this be imaginary, or changing one that is true. Section 5.—When the party who issues the document attributes to himself, or attributes it to the person in whose 235 name he makes it, a name, or a character, or a quality, or a circumstance, which they have not, and which may be necessary for the validity of the act.

Article 711.—In order that the forgery of documents shall be punishable as such, it is necessary that the following circumstances shall concur: First, that it shall be committed fraudulently; second, that the forger shall propose to obtain some advantage for himself, or for another, or to cause damage to some one, or to the public; third, that there shall result, or may result, damage to society 236 or to any individual, be it in his own property, or in his person, or in his honor, or in his reputation; fourth, that the forger shall commit the forgery without the consent of the person to whom results or may result damage, or without the consent of the person in whose name the document is made.

Mr. Mitchell moved to strike out from the record all part and parts and sections of the Penal Code and Code of Criminal Procedure, offered, received and read in evidence, on the ground that said Codes were not enacted, nor did they become the laws of Mexico until 237 long after the treaty was ratified between the United States Government and Mexico; motion denied and exception taken.

THE PROSECUTION RESTS.

Mr. Mitchell here moved for the discharge of the prisoner.

Hearing adjourned to Monday, February 13, 1888.

238 NEW YORK, February 13, 1888.
3 o'clock P. M.

Present.—The COMMISSIONER; MR. NICOLL; MR. MALLET-PREVOST; MR. MITCHELL; MR. BIEN.

The Commissioner.—The definition given by Bishop, in the latest edition of his treatise on Criminal Law, Vol. 2, is as follows: "Forgery is the fraudulent making of a false writing which, if genuine, would be apparently of some legal efficacy." And in the first volume of the same work, Section 734, 239 he says that forgery is indictable, because it must tend to defraud individuals or the public. The question in this case, in the first place is, whether we have a fraudulent making or a false writing. There are three charges in the complaint. First, that a fraudulent letter was written by the prisoner, addressed to the owner or manager of a theatre in the City of Mexico, in substance accrediting the prisoner as the legally authorized agent of Mr. Abbey, to carry on arrangements for the giving of operatic concerts, the preliminaries to which had already been taken by Mr. Abbey. 240 I understand that that charge is substantially abandoned. I should judge so from the evidence submitted; for the reason that there is no proof as to who wrote the letter which is referred to in the charge. There is proof that a letter in substance as stated was received the day after the arrival of the prisoner in the City of Mexico, which letter appears to have miscarried, and which it was apparently the intention should have preceded his arrival, and operated as an introduction of himself. The second charge is that operatic tickets, that is, tickets for admission to operas to be given in the City of

Mexico during a period which was covered 241
by the engagement of the theatre to which the tickets referred were issued with the name of Henry E. Abbey upon them. The third charge is that tickets for the same performances were issued with the name of Marcus R. Mayer upon them.

The only evidence that has been introduced in this case which bears upon the question further than that referred to in the matter of the letter, is the evidence pertaining to the second count, namely, that fraudulent tickets, with Henry E. Abbey's name upon them were issued, and with that charge 242
solely we have to do.

These tickets, it appears, are in print. There is no manuscript writing upon them. But there is, besides the print, done in the printer's office, a stamp, in the form of a seal, containing the words "Henry E. Abbey Company," and the proof shows that this stamp was used by the prisoner, or in his presence, which is the same thing, and impressed upon these tickets as they appear in the Exhibit C, referred to in the testimony. That this is a false writing so far as the body of the contract is concerned, although in print, has been adjudicated by a number of 243
authorities. Upon that point I assume there is no longer any reason to doubt. That these printed tickets are as much a false writing within the common law definition of forgery as if the prisoner had written them with his own pen, without the intermediary of the printer.

It must appear that this writing, that is, this ticket, would, if genuine (that is, if it had been stamped by Mr. Abbey himself, or by his authority), be apparently of some legal efficacy, or tend to defraud individuals or the public.

244 The difficulty of the case hangs upon the application of this definition to both the contents of this writing apart from the signature, and the signature itself. The difficulties attending the question of the contents of the ticket seem to me to have been disposed of, as a *prima facie* case, by the testimony given by the prosecution. Upon the face of it, disregarding the testimony of the witness given at the last meeting, who, as an expert, was questioned concerning the validity of contracts not expressing any legal consideration in the City of Mexico, and viewing the contract as it would be viewed in the Courts

245 of this country, or in any other Courts practicing according to the rules of the common law, the ticket itself appears to have been of no legal efficacy, because, apart from the extraneous circumstances, such as have been proved in this case, it appears to be nothing more than a token, or a simple promise, without any consideration. But testimony has been adduced here which is ample to show that these tickets were actually sold, that money considerations passed, that *bona fide* holders by the thousands had them; and it would seem, therefore,

246 as if the question of a consideration were as effectively established as if the ticket itself expressed it. Moreover it has also been proved that the theatre had been engaged by Mr. Abbey at the time designated by the fraudulent tickets as the time when the concerts would be given, and a deposit made for the payment of the rent. So that the lessee of the theatre was, under all the ordinary obligations of a contract, bound to reserve the theatre for this express purpose had the tickets been genuine—and doubtless did so—and therefore the circumstances apparently existed, which made it

incumbent upon Mr. Abbey, if these tickets 247
had been genuine and the signature had been authorized, either to give the performance for which the money had been taken, or refund to the public the money which he had received, or had been paid.

It has further been claimed that the prejudice of another's right, which is spoken of in Blackstone as an element in the definition to constitute common law forgery, is such prejudice as has been proved by the prosecution in this case, namely, that the conduct of the prisoner had been such that the defrauded party, Mr. Abbey, had been compelled to moderate the terms upon which admissions to the genuine concerts, which were 248
subsequently given, were placed, and that he was in various ways prejudiced by reason of the conduct of this prisoner. Disregarding that consideration, however, it would seem as though this contract, if the signature to the concert is sufficiently represented in this seal upon the ticket, was such a contract as would make Mr. Abbey liable in damages to the extent at least of the amount that he had received for the tickets. I think all the authorities bearing upon the question of what constitutes legal efficacy are very 249
plain to show that this was a contract, as distinguished from a mere token.

In 8 Cox' Criminal Cases will be found reported a case of forgery charged against a person who used the name of the proprietor of an article of baking powders, which were prepared and done up in bundles and stamped "Borwick's Original Baking Powder," &c. The prisoner caused to be prepared spurious baking powders, and caused to be printed a number of packages with identically the same impression. He was indicted for forgery, and the Court held not forgery;

250 that it was a case of obtaining the money under false pretenses. It is a very good case as illustrating the difference between a trade mark and a contract. The stamp upon the paper did not purport to be a contract; it simply represented that the packages contained the same baking powders as the original Borwick powders.

So, in a leading case in this State, 9 Cowen, 775, in which the opinion is given by Mr. Justice Cowen, where a promise to pay in labor, couched in the form of a promissory note, the signature being forged, came before the Court, the Court held this could not be 251 forgery, simply because, if true, the one who signed the note was not liable, unless it appeared that a consideration had been given; and that consideration not being upon the face of the note, "and not having been proved by extraneous circumstances," the instrument itself was simply *nudum pactum*, and void on that account.

It seems to be clear, under the circumstances of this case, that proof is ample to show that so far as this was a valid contract—that is, that if the stamp had been put upon it by Mr. Abbey, or by his authority, 252 Mr. Abbey could be held upon it; that it was clearly to his prejudice, as well as tending to defraud both him and the public, and, therefore, within the definition of the common law as laid down by numerous authorities.

But other elements are necessary to constitute a contract than simply the body of the contract. Manifestly, it must be signed in some way or other to make it a binding obligation. That any writing, simply containing a statement, without the name of some person appended or signed to it, or in some way inserted in the document so

as to make it appear to be the statement 253
of that person, cannot be the subject of a
forgery.

We come now to what is necessary to constitute
a signature to such a contract so that
it may be the subject of a forgery. It must
be plain that if the signature itself, being an
original, could not bind the party, of course
the counterfeit of that signature, or the
forging of it, would not. That is a plain
proposition. Now, then, how will it be, if such
signature is appended as contains in itself the
name of a person with intent to make the
public believe that that person himself singed
it, and couched in such language, or put in 254
such form, that an ordinary person under
the existing circumstances shall believe that
signature was appended by the person whose
name is included in the signature? This
seems to me to be the test in this case.

I think it is Greenleaf, the second volume,
that we find, as bearing upon this question
of legal efficacy, a statement which I will
read. He says, Section 105, of Vol. 3, that
it must be such as is calculated to deceive.
"It must appear that the instrument on its
" face had such resemblance to the true instrument
" described as to be calculated to 255
" deceive persons of ordinary observation,
" though it might not deceive experts or
" persons more than ordinarily acquainted
" with the subject. The want of such appearance
" on the face of the paper can not
" be supplied by evidence of any declarations
" or representations made by the party
" charged at the time when he uttered and
" passed it as true." In other words, the
paper must of itself, on the face of it, contain
such a representation that an ordinary
person—not an expert—may be deceived,
so that if the prisoner in this case, in

256 disposing of these tickets, had attended them with the representation that that was the way that Mr. Abbey ordinarily signed his name, and on the strength of that the tickets had been taken, it would not help in the slightest degree to make the case one of forgery. It would rather tend, if anything, to take from it the nature of forgery, and convert it into an ordinary case of obtaining money under false pretenses. The paper of itself must contain such a signature that the ordinary person might suppose that Henry E. Abbey himself, or by his agent, signed it. And the same author goes on to
257 say; "But a mere mistake, such as a blun-"der in the spelling of a name, will not "make any difference, it being sufficient to "constitute the crime if a signed writing "which is forged be intended to be taken as "true, and might be so taken by "ordinary "persons."

The question then, is whether this is such a signature as might be taken by psrsons in the City of Mexico of ordinary intelligence as being tickets issued by Henry E. Abbey, or by his authority. A significant circumstance, to which I call the attention of counsel in the argument, I will allude to in this
258 connection. It appears that the prospectus has appended a printed signature in the words "The Company" it appears nowhere, if I am correct in my recollection of the evidence (and if not, I hope counsel will correct me) that the words "Henry E. Abbey" were used except upon these tickets. Counsel call my attention to the prospectus, in which the words "Henry E. Abbey Company" appear, at the head of the prospectus, but not purporting to be in the form of a signature. I think I am right in saying that there is nothing in the evidence anywhere that shows

any signature with the words "Henry E. 259 Abbey" except in the ticket itself; and the question is whether any ordinary person, under such circumstances as have been described in this case, would not have been deceived into concluding that Henry E. Abbey had either stamped, or authorized to be stamped, his name upon these tickets.

It seems, from an examination of the authorities, that there must be a signature which in some manner resembles the signature of an original. The degree of this resemblance to constitute the crime of forgery is very difficult to determine. 260 It seems to me that the circumstances of each particular case may have to be called in requisition, or may be pertinent, in determining what degree of likeness to the original the law requires. That an exact facsimile of the handwriting is not necessary is plain. That it need not in any degree resemble the handwriting of the original, I think, is plain. That it need not be in writing at all, but may be made by means of an engraving, or a stereotyping process, or in any other manner is plain. Whether in the ordinary printing type would not appear to be so clear upon the earlier authorities, but 261 authorities have been cited here which would make it seem as though the charge of forgery of a signature might legally lie where only type were used.

In a case reported in 3 Gray, Mass. Commonwealth *vs.* Ray, a careful study of which I have made, it appears that the entire ticket was executed from a stereotype plate. It would seem from an examination of the case that the signature of the ticket, the name "D. L. Fremyer," purported to be an imitation of his handwriting, and the point was taken that there must be an actual writing of

262 the signature in order to constitute forgery.
But the Court, both below and on appeal,
disregarded this construction and held that
circumstances determined whether this were
a requisite or not. The Court says: "The
course of business and the necessities for
greater facilities for dispatch have induced
to some extent the practice of having contracts
and other instruments wholly printed
or engraved, even including the name of the
party to be bound." Now, it would hardly
seem that such shadowy distinction could be
maintained by the Courts as, that the counterfeit
263 of the signature must at least exist so
that type muts be used in script—script type
—instead of ordinary type, in order to constitute
a forgery. And, in fact, an examination
of all the authorities leads me to the
conclusion that the distinction, after all, is
the intent with which the signature is employed,
and whether the means of employing
it are such as would be likely, under the circumstances,
to impose upon people of ordinary
intelligence.

It could hardly be expected that such tickets
as tickets for a season of concerts, to be
given to a whole city, to be issued to the entire
264 public, should be in writing. Therefore,
when it is once conceded (as we all know it
is the practice—and under the circumstances
it could hardly be otherwise) that the tickets
should be all in print—it would hardly seem
that the distinction should rest upon the
handwriting—whether the handwriting is attempted
to be imitated on the ticket by means
of lithograph, or otherwise, or whether simply
type are employed.

I cannot come to any other conclusion in
this case than that the distinction lies, after
all, in the intent with which the name is
used, and that circumstances must determine

whether there was a likelihood that the public, to whom the tickets in this case were disposed of, would be deceived by the kind of signature employed. 265

It seems to me that it was clearly the intent of the prisoner, thus far, as the testimony shows, to lead the public of Mexico to the conclusion that Henry E. Abbey, whose name is printed upon this ticket in the form of a seal, giving it the appearance of a signature, either himself personally, or through his duly authorized agent, stamped the tickets for the purpose of disposing of them to the public; that, otherwise, he would not have employed the words "Henry E. Abbey" 266 as he did; that he would not have used the form of the seal, as he did; that he would not have employed a different colored ink for that purpose, as he appears to have done; and, in fact, that he would not have labored so assiduously to convey by every means within his power to the public the impression that Henry E. Abbey had authorized these tickets, at the same time carefully guarding against using a similtude or a counterfeit of Henry E. Abbey's signature.

Under the circumstances, the question arises, what is the duty of a magistrate, with 267 such impression as to what constitutes forgery, to do, sitting to administer the law, so far as the Revised Statutes have appointed him so to do, rerelating to extradition. Being of the opinion, as I am, that a *prima facie* case has been made out, and that there is reasonable ground to believe that the offence charged constitutes forgery within the definition of the common law, so far as the authorities throw any light upon the requisities going to constitute that offence, it seems to me my duty to deny the motion made by the de-

268 fendant, and put him upon his proof of the facts in the case--having in view always the fact that the prisoner has his remedy, not alone in defending himself in the Courts of the country to which he is remitted, but has his remedy here in the place of his preliminary examination, and, particularly, in such a case as this, where, it seems to me, the case is likely to turn upon questions of legal construction, rather than upon questions of fact. These questions of legal construction are not conclusively determined by the Commissioner, but are within the province of the Court upon an appeal taken in
269 the usual form of a writ by *habeas corpus* to determine. I not only think it is my duty to deny the motion of the prisoner's counsel, but I am clearly of the opinion that I should not discharge my duty under such circumstances, if I discharged him.

Motion denied ; exception taken.

Hearing adjourned accordingly to Wednesday, February 15, 1888.

270

NEW YORK, February 14, 1888. 271

Hearing pursuant to adjournment.

Present—THE COMMISSIONER, MR. NICOLL, MR. MALLET-PREVOST, MR. MITCHELL

Mr. Mitchell.—The defence state that they do not propose to put in any testimony, but, upon commitment being made, as they understand by the Commissioner's opinion he has decided to make if no testimony is offered by the defence, the defence shall apply immediately for a writ of *habeas corpus* and desire that no steps be taken in the meantime to remove the prisoner from this District. 272

The Commissioner.—I do not think that, under the circumstance, in view of the reasons that I have given for committing the prisoner, the prosecution would attempt to remove the prisoner in the meantime.

Mr. Nicoll.—The prosecution stipulates that the defence may have forty-eight hours in which to obtain the writ of *habeas corpus* and that in the meantime no steps will be taken by the prosecution looking to the return of the prisoner. 273

274

Exhibit A, Feb. 7, 1888.

TRANSLATION.

I, Licentiate Pablo Gonzales Montes, Fourth Judge of the Criminal Branch of this capital, exercising my duties together with the Secretary Licentiate Jose Maria de Yturbe, do certify:

That in the proceedings had in this Court for the purpose of investigating the forgery committed by him who assumed the name of M. R. Mayer, with intent to defraud the public on the last days of November and first days of December, 1886, I have prepared a record which, copied to the letter, is as follows: 275

"In the City of Mexico, on the fourth day of the month of April of 1887, the Fourth Judge of the Criminal Branch, Licentiate Pablo Gonzales Montes who exercises his functions before the Secretary, Licentiate Jose Maria de Yturbe having examined the records of this matter determined that:

Whereas it appears by said records that he who assumed the name of M. R. Mayer, making himself out to be the representative of Henry E. Abbey, is believed to be the person responsible for said forgery and

276 Whereas said forgery is provided for and punished by Articles 701 and 710, sections 1st and 5th, and article 711 of the Penal Code, the first of which articles treat of the forgery of seals of private persons, and the second of which treats of the forgery of private instruments by means of placing a forged signature and assuming a name and position not belonging to the forger and necessary to the validity of the act; and

Whereas said forgery had all the requisites set forth in articles 711th in regard to committing the forgery fraudulently, with intent to obtain some advantage, or to cause damage such as actually resulted; and

Whereas said forgery was committed without the consent of the parties injured and without the consent of the party in whose name the instrument was made, and 277

Whereas said person arrived at this capital calling himself the representive of the company Henry E. Abbey, for the purpose of giving five concerts in which Madam Adelina Patti was to take part, as appears by the prospectus which he ordered to be printed, and by tickets which he sold with a forged seal marked or printed thereon, which said articles were collected by the judicial authorities of the place where the sale took place and are now here in this Court; and

278 Whereas said facts further appear from the depositions of Mr. Pablo S. Berges, owner of the Teatro Nacional at which place said concerts were to be held; of Mr. Manuel Alfaro, party in charge of the ticket office of said theatre, who as clerk of said forger, sold the said tickets; of Mr. Edwardo Orrin who, prior to that time, had leased the theatre and of Mr. David MacKenzie head employee of the management of the Central Railroad; and

Whereas, the product of said sale amounted to $24,654.50, as appears by the receipt in this case to be found on page 38, containing two signatures, placed there by said person; and

Whereas, there appear also the acts set forth by the telegram on page 17, addressed from Agnas Clientes to Mr. Berges, with the assumed name of Mayer, and by the message on page 46, which said person left with Mr. MacKenzie, in the Pullman car at the time he disappeared or left the Central Railroad; and lastly, by the telegrams, copies of which are to be found on pages 72 and 73, announcing his contemplated arrival at Mexico, and, 279

Whereas, the acts set forth are sufficient ground for ordering the arrest of said person; therefore, by virtue of the provisions of Art. 244, of the Code

280 of Criminal Procedure, as well as those of the Penal Code, hereinbefore referred to, it is ordered that said individual of whom notice has been given, and whe uses the names of M. R. Mayer, Charles Bourton and A. W. Bencit, calling himself doctor, be arrested on the said charge of forgery, with intent to defraud various persons with false documents and seals ; and that any valuables which may be found in his power be collected to the end whereof, let proper orders be issued to the police of this capital. and corresponding letter rogatory to places within the limits of this republic, setting forth therein the description of the fugitive, as appears by the records, with other proper information,
281 and let such demands for extradition as may be required, be made through the proper channels.

With this closed the record of the day, which the Judge signed. I do so certify : P. G. Montes ; J. M. de Yturbe, Secretary.

The description of the fugitive is as follows : Stature below the average, rather stout, of dark complexion, black hair, forehead regular, eyebrows black and very heavy, a trifle cross-eyed using glasses, a nose somewhat aquiline, mouth covered with heavy black moustache, slightly gray; he speaks French and German very well ; he dresses well and uses a high hat."

282 For the purpose of giving effect to articles 1 and 2, of the treaty of extradition, celebrated between the United States of Mexico and the United States of America, on the 11th day of December, of 1861, the present instrument is issued, which I sign, together with my secretary, in this capital of Mexico, on the 14th day of the month of January, of one thousand eight hundred and eighty-eight.

P. G. MONTES,
J. M. de YTURBE,
Sec.

The Licentiate, Juaquin Baranda, Secretary of State, and of the department of public instruction, certifies: That the signatures at the end of the preceding document are those of the citizen Licentiate Pablo Gonzales Montes, Fourth Judge of the Criminal Branch of this city and of the Licentiate Jose Ma. de Yturbe, Secretary of said Court, and that they are those used by them in all their official acts. 283

And that the present instrument may have its effect I issue this in Mexico on the 21st day of January, 1888.

J. BARANDA.

No. 660 Free of duty. 284

The subscribing principal official of the Department of Foreign Relations, certifies that the Licentiate Juaquin Barando is Secretary of Justice and Public Instruction, and that the foregoing is his signature.

Mexico, Jan. 21, 1888.

JOSE T. DE CUELLAR.

STATE OF NEW YORK, } ss.:
City and County of New York, }

S MALLET PROVOST being duly sworn deposes and says: That he is acquainted with the Spanish and English languages and is accustomed to translate the same. That the foregoing is a true and correct translation into English of a certain document in the Spanish language purporting to be a petition from the Fourth Criminal Court of the City of Mexico on the 14th day of January, 1888, and asking for the extradition of M. R. Mayer, *alias* Charles Bourton, *alias* A. W. Bencit. 285

Sworn to before me this }
4th day of Feb., 1888. }

286 Ex. B, F'b'y 7, '88.

TRANSLATION.

I, The Licentiate Pablo Gonzales Montes, Fourth Judge of the Criminal Branch of this capital, performing my judicial duties before the subscribing secretary, the Licentiate Jose Ma de Yturbe, do certify :

That in the examination had here under my charge as to the forgery which for the purpose of defrauding the public was committed by him who called himself M. R. Mayer and who represented himself to be the attorney or agent of Henry E. 287 Abbey, the following records appear :

A seal which says : Inspection of Police, first demarcation.

In the City of Mexico at five o'clock in the afternoon of the third day of December, 1886, the subscriber determined to prepare the following record, in accordance with an order received from the citizen Inspector General of Police to go with the personal of this office to the office of the Hotel of Yturbide for the purpose of receiving from Mr. Jose Ma. Eraso, Superintendent of said Hotel, the three packages which on the preceding night the Manager of the Opera had left in his charge, with 288 advertisements of the appearance of the artist Adelina Patti for the 2d of January, which said packages contained money realized from the sale of seats, as appears by the declaration of the citizen Juan M. Velasquez, officer of foot gendarmes, who accompanied said manager called M. R. Mayer and who in company with Messrs. Alberto Zarate and Pablo S. Berges deposited the packages.

Having arrived at the office of the hotel and Mr. Jose Ma. Erazo, being present and having been requested to produce said packages, he presented three small canvas bags, two tied at the mouth with rope, the other sealed and having its mouth secured by a string of stamps of five cents. In order to open said bags there were called as witnesses the citizens Licentiate Benigno Arriga and Francisco Fuentes Farias, guests at said hotel. These being present, Mr. Erazo proceeded to open the small sealed bag, which was found to contain $3,903 in bank notes of various values; another bag was found to contain $133.50 in silver and $20 in two bills; the third bag was found to contain $288 in silver; the total sum amounting in all to $4,344.50. Mr. Erazo delivered over, and the same remains deposited in the "Banco National." 289

Thereupon, the subscriber went to the place used as a ticket office by said Company in the Teatro National, and the Citizen Manual Alfaro in charge of the sale of tickets, being present, he was requested to present such money as he might have received, together with the tickets on hand and the seals and other things which he might have belonging to the Company; this he did, declaring and presenting the following: $254 in bank notes, being amount received for one third box, two orchestra seats and two balconies sold this morning to Mr. Julian Martiel, a seal which says, "Patti Company, January of One thousand eight hundred and eighty-seven, Mexico, Henry E. Abbey"; the following tickets for the first performance, six orchestra seats, for the second, one orchestra seat, for the third, another orchestra seat, for the fourth, six orchestra seats, for the fifth, six orchestra seats, 88 box seats for the first performance, 96 for the second, 88 for the third, 88 for the fourth and 88 for the fifth, 216 tickets to second and third boxes for the first performance and for each of the rest, 749 tickets for the gallery in the five performances; also 1,000 tickets to parquet and balcony seats for the five performances, general admission, 995 tickets to second and third boxes, 1,245 general admission tickets to gallery; all of said tickets being sealed; of unsealed tickets 1,250 290 291

292 to the gallery; also a blank book in rough with sales of seats and five plans of the theatre.

Alfaro declared that the two days during which the sale took place under his charge, he delivered as the receipts thereof to the so-called Mayer $24,976.50, in two payments, the first made on the first day and amounting to $6,435 and the second made yesterday evening and amounting to $18,541.40. As witnesses to said second payment there were present Velazques, the officer of gendarmes, and Mr. Berges, also Valdes, the janitor of the theatre.

Said declaration was made after due legal protest, deponent remaining notified that he was constituted depository of all the tickets and of the articles
293 which he had presented, and that these were to remain at the disposition of the respective authorities. He further declared that he was a native of Mexico, 49 years of age, married, an employee, and residing at No. 13 in street "Buena Muerte." The above was ratified and signed.

Thereupon the officer Juan M. Velasquez being present and being interrogated in due form in relation to the citation made in regard to him, said: That he was from Zacatecas, 42 years of age, married, an employee and residing at No. 12 in the street of Don Toriber. He further declared that having been on duty at the Teatro National, and
294 having therefore been an eye witness of the fact, he can say that is true that about half past seven on the preceding night, Mr. Alfaro delivered to the so-called Mayer $18,100 in notes and over $400 in silver; that he accompanied the said individual and his clerk, Zarate, to the Hotel Yturbide, where said Mayer left the same three small bags which he has present to guard, delivering them to the Superintendent of the hotel; that he has nothing further to state, and that what he has said is the truth, which he affirms and ratifies, signing on the margin —manuel Alfaro and Juan M. Velazquez—Aleyandro Barroso—A. P. Martinez—Victorio Sancedo,

a seal which says: Fourth Court of the Peace of 295
the Criminal Branch.

In the City of Mexico, at nine o'clock in the morning of the 4th day of Dec. of 1886, the foregoing record was received and noted in the Government book under No. 217. By reason thereof, the Fourth Judge of the Criminal Branch, the Licentiate (Pablo Gonzales Montes), in the exercise of his duties, and in the presence of the subscribing secretary, the Licentiate Jose Ma de Yturbe, determined, that the corresponding investigation be made, in order to determine the facts; and that the authorities who acted in the matter yesterday, be requested to furnish such informa- 296
tion as they have relative to the matters in question.

On the same day the Citizen Pablo S. Berges, a native of Mexico, unmarried, 37 years of age, a proprietor, and residing at No. 19 in the street of Tacuba, being present, and having first observed the legal requisites, declared:

That deponent and his family are the owners of the Teatro National; that on the 4th day of September last past Mr. Edwardo Orrin spoke to deponent in regard to the renting of said theatre, and to that end, on said day, sent him a letter, which he now exhibits and which contains his pro-
posals; that deponent answered in the terms set 297
forth in the letter which appears in his copy book, pages 324 to 326, a copy of which he now presents in order that the same may be compared and his copy book returned to him; that by virtue thereof he entered into a contract with Orrin Brothers on the 24th day of Nov. last past; which said contract written upon two sheets of paper he now exhibits, two copies of the same having been made, the other copy is in the possession of said Orrin; that he believes that Orrin did not apply to the City Council for the permit required for giving performances in the theatre, but that witness advised the so called Mayer, that if he opened a sale

298 for season tickets he would have to obtain said permit at least before giving the first representation; that Orrin notified him that Mr. Marcus B. or M. Mayer was to come for the purpose of attending to the preparations for the entertainments which were the object of the said contract, whom Orrin Brothers said they represented; that on the 27th day of last November, he received from Agnes Callientes, the telegram which he also exhibits, and that on the following day the so-called Mayer presented himself; that thereupon deponent went with him to see Edwardo Orrin, and that not finding him they went to the printing house of the "Gran Libro," situated on the First Street of
299 "Yudependencia." That Mayer having inquired of deponent where it was customary to have the printing done; deponent took him to said printing house, where he ordered the hand bills, programmes and tickets, saying that he would return, for the purpose of determining the number of programmes and tickets, and fixing the number of hand bills at 40; that on that same day, the 28th, they went to the circus to see Orrin, with which Mayer spoke in English, a language unknown to deponent, French being the language used by them in their conversations: that Orrin asked him in Spanish whether he
300 thought it was well to open a sale for tickets or not, to which he answered; that his experience taught him it was well to do so; that in the interview between Mayer and Orrin it appeared to deponent that they were acquainted with each other. and that Nicto Orrin's clerk said to deponent that he who spoke with Orrin was a brother of the Mayer mentioned in the contract; that on taking leave Orrin said, "I am not able to go out. Arrange matters yourselves, and please excuse me;" that thereupon they again returned to the printing house and afterwards went to the office of the theatre; that there the so-called Mayer asked deponent to furnish him with a clerk to attend to all

matters relative to the performance, whereupon 301
deponent recommended to him Mr. Manuel Alfaro,
as an honest man, and understanding the business,
and as recommended by Mr. Ysidor Pastor & Co.,
in the letter which he exhibits; that on the 30th
day of November, and first of the present month,
deponent went with the so-called Mayer to see
Orrin, and that they spoke of the permit, stamps
and other expenses, with which details deponent
was not familiar; that on the first instant,
deponent was in the theatre and saw there Alfaro,
Mayer and a Mr. Zarate who was engaged in stamping
tickets, the sale of which began on that day;
that on the 29th day of said November, he received
from New York a certified letter addressed to the 302
proprietor of Teatro Nacional, Mr. Berges, in which
he was informed that from one moment to another,
Mr. Marcus R. Mayer would arrive at this Capital
amply authorized to attend to all matters relating
to the performances which Patti was to give in
Mexico; that he showed said letter to Doctor
Miguel Alvarado, at whose house were also present
Dr. Manuel Carmona y Valle, who understanding
English, read it, and Mr. Manuel, one of the sons
of Mr. Alvarado, that on the following day he
showed the letter to my Raul Duvois, in presence
of Manuel Valdes, the janitor of the theatre, and
on the afternoon of said first day of the present 303
month he showed it to the so-called Mayer, who
said to him that that was the letter of introduction
of which he had spoken to him; whereupon
he asked deponent for it, saying that he wished to
show it to Mr. Maning, the American Minister in
Mexico, so that he might see the delay which had
been suffered, the letter having delayed ten days
in arriving; that deponent having no reason to
withhold it loaned it to him; that although requested
on the following day so to do, he did not
return said letter, stating that Maning had it; that
for the reasons set forth he believed that said individual
was the true representative of the Com-

304 pany, Henry E. Abbey; that on the second day of
the present month he learned first from Silvano
Coblent and afterwards from Zarate, that the Governor
had sent for the so-called Mayer and had
asked him to give security for the money realized
by him from the sale of seats in the theatre;
that having been at the office he saw that
after eight o'clock in the evening Mayer
began to receive from Alfaro the account
that he counted over $18,000 the greater part in
bills, it appearing to deponent that the silver amounted
to only from $300 to $400; that he noticed
at the time that Mayer was much pre-occupied and
in a great hurry, and asked deponent to go with
305 him on the following day to the Bank of London
to deposit the eighteen thousand and odd dollars,
as he had already on the evening before taken the
six thousand dollars requested of him as a guarantee
to the governor, that the $18,000 and odd were
placed in two bags, which were carried to the hotel
Yturbide and deposited in the care of Mr. Erazo,
who did not count the money which he received,
and Mayer in the presence of Velasquez and Zarate
placed some stamps furnished by Eraso on the
mouths of the bags and on the bundles of bills
which he had been making up at the ticket office;
that on leaving the theatre to go to the hotel,
306 Mayer asked for two gendarmes to guard him, and
that he went in front, walking fast with Zarate;
that after leaving the money at the hotel he asked
when he could get a carriage and took leave very
hurriedly saying that he was going to the circus;
that when Mayer counted the money there was
present Velazquez, the office of gendarmes, who accompanied
Mayer to the hotel, walking with deponent;
that after taking leave of Mayer Zarate
went with deponent speaking about Mayer, and
saying that he began to suspect him because he had
been sent for by the Governor and that he, Zarate,
in anticipation of whatever might happen desired
to inform him that he was going to Vera Cruz, sent

there by Mayer to advertise the performance of Patti, and he asked deponent in case anything happened to telegraph him at once, addressing him at the hotel de Diligencias, and using the word "return"; that he has nothing further to say; he affirms what is set forth and signs on the margin— 307
P. S. Burges—G. Montea, J. M. de Yturbe, Secretary.

On the 7th day of said December, Mr. Edwardo Orrin of the United States, a widower, 38 years of age, manager of theatrical performances and residing at the Hotel del Bazar, being present, and the legal requisites having first been observed, he declared: That at the request of his brother George living in New York and representing Abbey, 308
he entered into a contract for the leasing of the Teatro National; that the so-called Mayer was not recommended to him by any one, but was simply presented by Mr. Berges, at a time when deponent was very busy; that Mayer asked him a multitude of questions, among them what he thought of asking for a special train to go to meet Patti, taking the President of the Republic and all of the principal personages; that at the moment of introduction he noticed that this Mayer was not the one he knew, and deponent fixing his attention upon him, he hastened to say, "I am not the one whom you know, but I am his brother," and deponent 309
seeing some family resemblance his suspicions were allayed; that during several visits which Mayer paid him he tried to find out from deponent all the business of the company, Abbey having undoubtedly done the same thing in the United States, as he referred to true facts, and spoke always in the plural number as though he formed part of the company; that he did not want to follow the advice given him by deponent to open a sale of season tickets at equitable prices, saying that Abbey himself had fixed the prices and that he was compelled to proceed with much activity, as he might have to leave at any

310 any moment for California, and that his brother Marcus would replace him and would arrive on the 12th inst. And he affirmed the above signing on the margin—Ed. H. Orrin—G. Montes—Yturbe, Secretary.

On the same day Mr. Manuel Alfaro being present, the legal requisites having being observed, declared, that he re-affirms this deposition made by him at the commisarit, correcting his declaration as to the amount of money which he delivered to the so-called Mayer the correct sum being $24,654.50, to wit, $6,310 on the night of the first instant, and $18,344.50 on the night of the second, which sums were noted by Mr. Alberto Zarate, as appears by
311 the notes presented, in which appears the signature in initial which Mayer placed there; he exhibits them for the purpose of giving information, but not as a formal account, for I repeat that they were notes for the purpose of forming a general account and subsequently securing the receipt in accordance with the provisions of law. And he affirms the above, signing at the margin—Manuel Alfaro—G. Montes—Yturbe, Secretary.

On the 8th of the same December, Mr. David MacKenzie, a native of Scotland, married, 44 years of age, an employee of the Central Railroad and resident of No. 2 on the street of San Diego, being
312 present, and the legal requisites having been observed, declared: That on Wednesday, the 1st inst., the so-called Mayer asked for a special train to Paso del Norte, offering $500; that deponent answered him that it would cost $2,500; that on the following day Mayer returned and said that he wanted to leave in the evening train, but as he would not be ready at the hour of its departure he wanted the train delayed, to which deponent answered that was not possible, but that he would take him in a special locomotive until he caught the train and that this would cost him $500; that at ten minutes before nine o'clock Mayer presented himself without baggage, with a high hat, coat but-

toned up and evidently carrying something within, 313
as his coat was very tight, the body being full; that at nine o'clock the train left, and talking with deponent he told him that he had been very happy as he had arranged his business perfectly, having completed the first sale of season tickets and that he desired to open a second one, but in order to do this he had to consult Mr. Abbey, and that was his reason for going; that they caught the regular train at Lecheria, and passed its locomotive; that thereupon Mayer asked with surprise whether they had already caught the train; and located himself on the platform at the station; that deponent then 314
pointed out to him which was the Pullman car, to which car Mayer went; deponent going to a car of the first class; he did not again see him until half past ten, when deponent went to the Pullman to lie down and found Mayer standing behind the door toward the other passenger cars, looking through the glass; that deponent went to lie down, and upon arriving at Yrapuato, he was awaked by the porter, who told him that they were about to arrive at Silao to breakfast, and gave him a card dated San Juan del Rio, in which the so-called Mayer said that he had remained at Queretaro to wait for the train coming from El Paso, as he had received a telegram informing him of the coming of 315
the person whom he had to see; that said card is in the hands of the Governor of the District; and that from news he subsequently received he knows that Mayer remained in Queretaro, that he had the hair on the forehead shaved, and had that part covered with the hair; that he spoke the English, which is learned in Europe; that in his opinion he is a Hebrew of Alazasia. And he ratified the above and signed on the margin D. MacKenzie.

With which terminated the record of the day, 316 which the Judge signed—I do so certify—P. G. Montes, J. M. de Yturbe, Secretary.

P. G. MONTE.
J. M. DE YTURBE.

The Licentiate Juacquin Baranda, Secretary of State, and of the Department of Justice and Public Instruction, certifies that the preceding signatures at the end of the foregoing document are those of the citizens, the Licentiate, Pablo G. Montes, Fourth Judge of the Criminal Branch, and Jose Maria Yturbe, Secretary of the said Court, and are the ones used by them in their official acts. And

317 that these presents may have due effect, I issue this in Mexico on the 21st day January, 1888.

J. BARANDA.

The subscribing principal official *ad interim* of the Department of Foreign Relations, certifies that the Licentiate Juacquin Baranda is Secretaryof Justice and of Public Instruction, and that the preceding is his signature.

Mexico, 21 of January of 1888.

JOSE T. DE CUELLAR.

318 STATE OF NEW YORK, } ss. :
City and County of New York, }

S. Mallet-Prevost, being duly sworn, deposes and says that he is acquainted with the Spanish and English languages, and is accustomed to translate the same; that the foregoing is a true and correct translation of a certain Spanish document purporting to be a copy of certain instruments on file in the Fourth Criminal Court of the City of Mexico in relation to a certain forgery or forgeries alleged to have been committed in said city by Marcus R. Mayer, *alias* Charles Bourton; said Spanish origi-

nal having been issued from said City of Mexico on 319
the 21st day of January, 1888.

Sworn and subscribed to before me }
this 4th day of February, 1888. }

TRANSLATION.

Copy of the instruments upon which is based the warrant of arrest issued April 4th, 1887, against
him who assumed the name of M. R. Mayer: 320

Instrument on page 36.

Seats sold on Wednesday, December 1st, 1886.

15 first boxes	$3,750.00
5 gallery boxes	200.00
42 orchestra seats	1,260.00
51 front gallery seats	510.00
2 second boxes	250.00
1 first box to Mr. Erazo	250.00
3 orchestra seats to Mr. Erazo	90.00
	$6,310.00

(Signed) Received--M. R. M. 321
Thursday (2), Second of December, I delivered to Mr. Mayer for sale of this day $18,344.50
(Signed) Rec'd M. R. M.

Instrument on page 17.

A seal which says: "Central Railroad Telegraph, corner of Santa Ysabel and ist of San Francisco streets—1226—Mexican Central Railroad Company, Limited—

Telegram received—676—Received in Mexico, 27 of 1886, dated Aguascalientes, 27—A. Berges—Theatro Nacional—Mexico.

322 Serai chez vous demain matin vers dix heurs (which translated from the French means, I shall be at your house to-morrow morning about ten o'clock). (Signed) Mayer.

Instrument on page 47—

San Juan del Rio—My Dear Sir:—

A telegram has just been handed come here and I could not read it in time to leave the station, but shall do so at next station– Queretaro I find my journey is premature, as the gentleman I was going 323 to meet is actually in the down train at Queretaro, and have to thank you for your kindness, and regret not to have had the opportunity of seeing you before I left. Please excuse the scribble, but the train shakes too dreadfully. Once more thanking you, I remain, my dear sir, very truly yours, (Signed) M. R. Mayer.

Instrument on page 72—

Aguasc, Nov. Berges, Teatro Nacional Mexico, Serai chez vous demain matin vers dix heuers (Signed) Mayer.

324

Instrument on page 72—

Abbey—1254 Broadway, New York: Telegraph exact date advance agent arrive in Mexico, to be ready for him. Should come as about twentieth December. (Signed) Hibler—Theatro Nacional, Mexico.

A seal which says:—"Mexican Republic—Government of the Federal District." Section 5th, No. 5,734.

By order of the citizen Governor, I have the honor of sending you two telegrams, deposited in Aguascalientes by Mayer, called the representative of Abbey, begging you to acknowledge receipt—Liberty and Constitution—Mexico, December 14th, 1886. (Signed) Yslas y Bust—To the Fourth Judge of the Criminal Branch. 325

I, Licentiate Jose Maria de Yturbe, Secretary of the Fourth Criminal Court of this Capital, do certify: That the foregoing is a true copy of the original, which appear on the pages referred to in the case against him who assumed the name of M. R. Mayer, for forgery to defraud a number of the public. 326 I do further certify that the prospectus and sealed ticket hereto annexed are of those which were collected from the office of the Teatro Nacional, together with the seal with which they are marked, and which said seal is deposited in this Court. I issue these presents for the purpose of having them annexed to the extradition petition of the person who assumed the name of M. R. Mayer. Done at Mexico, on the 14th day of January, 1888.

J. M. de YTURBE,
Sec.

V. B.
G. MONTES. 327

The Licentiate Juaquin Barando, Secretary of State and of the Department of Justice and Public Instruction, certifies:

That the signatures affixed to the preceding document are those of the citizen, Licentiate Jose Ma-Yturbe, Secretary of this City and of the Judge, Citizen Pablo Gonzales Montes, and that they are the same used by them in all their official acts.

In order that this may have effect, I issue this in Mexico on the 21st day of Jannary, 1888.

J. BARANDA.

328 The subscribing principal official *ad interim* of the Department of Foreign Relations, certifies:

That the Licentiate Jaquin Baranda is Secretary of Justice and of Public Instruction and that the preceding is his signature.

Mexico, January 21st, 1888.

JOSE Y DE CUELLAR.

Translation of one of the tickets and of the prospectus and annexed to the foregoing. 329

Yellow Ticket:

Teatro Nacional. Adelina Patti,
Henry E. Abbey Company,
First Boxes, Number,

Teatro Nacional, Great Teatro Nacional.
Adelina Patti, Adelina Patti,
Henry E. Abbey Henry E. Abbey Company,
Company. First Boxes.

Red Ticket:

Teatro Nacional, Great Teatre Nacional,
Adelina Patti, Adelina Patti,
330 Henry E. Abbey Henry E. Abbey Company,
Company. Gallery.

Violet Ticket:

Teatro Nacional. Great Teatro Nacional,
Adelina Patti, Adelina Patti,
Henry E. Abbey Henry E. Abbey Company,
Company. Parquet and Balcony.

Yellow Ticket:

Teatro Nacional.... Adelina Patti,
Henry E Abbey Company,
Second and Third Boxes, Number.

Teatro Nacional, Great Teatro Nacional,
Adelina Patti, Adelina Patti,
Henry E. Abbey, Henry E. Abbey Company,
Company. Second and Third Boxes.

Translation of stamp impressed upon tickets : 331

Upon Yellow Tickets,

Henry E. Abbey Company, Patti, Mexico, January 4th, 1887.

Upon Red Tickets,

Henry E. Abbey Company, Patti, Mexico, January 7th, 1887.

Upon Violet Tickets,

HENRY E. ABBEY COMPANY, PATTI, MEXICO
JANUARY 11th, 1887.

332

Translation of Prospectus.

Great Teatro Nacional.

Henry E. Abbey Company,

First Appearance in Mexico of the Renowned Atist

Adelina Patti.

Only Five Performances—Last Tour before retiring from the Stage.

Madame Adelina Patti, having determined to retire from the stage where she has achieved so many and well merited triumphs during her professional career, before closing the brilliant crown which 333 adorns her forehead, she desires to visit this country. The company desiring to second the desires of the Great Artist and taking great pleasure in offering to the intelligent Mexican Public the opportunity of admiring one of the greatest notabilities which the profession has produced, opens a short season of only five representations which will begin on Sunday, January 2d, 1887, with the certainty of finding the concourse on the part of this cultivated society most satisfactory and worthy by a thousand titles of spectacle of this nature :

334 The representations to be given in this Capital will be as follows :

In three acts—First Act :

Grand Concert.

Second and Third Acts :

Italian Opera—Elenco.

The Artists who accompany Madame Patti in the Act of Italian Opera, are :

First Contralto,
Madame Sofia Scolchi,

Second Contralto,	Second Soprano,
335 Mde. Jiuditta Galassi.	Mde. Erminia Novara.

Tenor,
Mr. Albert Guille.

Baritone,	Bass,
Mr. Antonio Galassi,	Mr. Franco Novara.

Buffon,
Mr. Carlos Orlandini.

Orchestra composed of 50 Musicians,

Under the direction of the well known and distinguished Master :

Luigi Arditi.

336

The Operas to be placed upon the stage are,

Linda de Chamounix,
Semiramis,
Faust,
Martha,
Trovatore,
Traviata,
Dinorale,
Barbero de Seviela,
Lucia de Lamermoor,
Don Pascual.

These works will be given on the 2d, 4th, 7th, 9th and 11th of January of 1887, in the following order :

First Representation 337

Sunday 2,

2d Act of Barbero de Seviela, and 2d Act of Semiramis.

Second Representation

Tuesday 4,

2d Act of "Don Pascual" and 3d Act of "Il Trovatore."

Third Representation,

Friday 7,

3d Act of ‘ Linda de Chamoix" and 3d Act of "Traviata." 338

Fourth Representation,

Sunday 9,

3d Act of Faust and 2d Act of "Dinorab."

Fifth and Last Representation,

Tuesday 11,

2d Act of Martha and 3d Act of Lucia de Lamermoor.

PRICES FOR ENTRANCE.

For each concert. 339

First Boxes, with eight admissions	$50 00
2d and 3d Boxes, " "	25 00
Parquet and Balcony	6 00
Gallery Boxes, with four admissions	8 00
Front seats in Gallery, with admission.	2 00
General entrance to Gallery	1 50

NOTES.

The five concerts which are advertised will be extraordinary ones, and the owners will have the right to take the five or any one of these separately, provided they give notice within the term hereinafter mentioned, viz :

340 Seats belonging to the owners will be reserved for them from the publication of this announcement, until seven o'clock P. M., of Wednesday, 1st day of next December, after which hour those not secured will be at the disposal of the general public.

For the convenience of the public the ticket office will be open for the sale of tickets on the second floor of theatre, from 9 A. M. to 1 P. M., and from 3 P. M. to 7 P. M., beginning on Thursday the second.

Notice is hereby given to the public that the Company will not be responsible for tickets sold outside of the theatre office.

341 Mexico, November 29, 188

The Company.

STATE OF NEW YORK,
City and County of New York, } ss.

S. MALLET-PREVOST, being duly sworn, deposes and says that he is acquainted with the Spanish and English languages and is accustomed to translate the same. That the foregoing is a true and correct translation in English of a certain instrument in the Spanish language, purporting to be a copy of certain instruments, upon which is based
342 the warrant of arrest issued April 4th, 1887, against one who assumed the name of M. R. Meyer, and issued from the Fourth Criminal Court of the City of Mexico, on the 14th day of January, 1888.

Sworn and subscribed to before me, this
4th day of February, 1888. }

TRANSLATION.

The citizen, Luis G. Carballeda Inspector General of Police, hereby certifies that in the matter of the 343 investigation of the fraud committed in this city by the so called Mayer, there appears a declaration which copied to the letter says as follows :—

In the City of Mexico upon the 21st day of the month of January, one thousand eight hundred and eight-eight, the subscriber general, Louis Carballeda, Inspector-General of Police, in the exercise of his official duties and in accordance with the orders received from the citizen governor of the Federal District, proceeded to receive the declarations to be made by the citizen. Timoteo Macias, whom the Governor of the District had summoned for that purpose ; the said citizen, Timoteo Macias being present. 344

After having protested according to law that he would speak truly touching all matters within his knowledge, upon which he might be questioned, declared :

That his name is as above set forth ; that he is a native of the state of (At) Jalisco and a resident of this city, living at No. 6, 1/2 Street of Santa Ysabel ; married, and by occupation a printer ; 38 years of age. Being asked what connection he had with the printing of the programmes and announcements which were circulated in this capital, announcing the first appearance in Mexico of the renowned artist Adelina Patti, in a series of five performances 345 in the Gran Teatro Nacional, he answered : that the printing establishment where the printing of the said programmes and advertisements took place belongs to a society whereof deponent is the managing partner, and that by reason thereof, deponent is the one who directs the work and business of the negotiation.

Being asked who received and who delivered the originals of said programmes and advertisements, and if he recognizes the original proof, which is here presented, he answered : that Mr. Pablo Berjes, known to deponent as the owner of the theatres, "Principal" and "Nacional" of this city, 346 called upon him on a Sunday morning, between 10 and 12 o'clock, the exact date deponent not being able to recollect at this moment; Mr. Berjes was accompanied by a foreigner, who was presented to him under the name of Mayer and as the representative of the Abbey management, and with whom deponent was not able to converse, because apparently, said Mayer was unable to speak Spanish, the said Berjes acting at that time as his interpreter; that said persons delivered to deponent the originals, and after consulting together in regard to the manner in which the printing should be done, ordered deponent to print for them the programmes and handbills like the proof, which is here presented, 347 for the purpose of posting them up on street corners; deponent calls attention to the fact that the proof presented is incomplete for the reason that the proper proof consists of one sheet, while the one presented is only half a sheet; that having received several names of artists which said parties cut in his presence from various American newspapers, the interview which as above mentioned, came to a close, Mr. Berjes retiring with his companion; after having requested that the printing be done as speedily and as cheaply as possible.

Being asked whom he saw in regard to the corrections of the proofs and what took place up to 348 the time of delivering the printed matter which he was ordered to prepare, he answered: that having printed the first proof he presented the same to Messrs. Berjes and Mayer, who personally corrected the same in his presence, the latter named person being the principal one to undertake the correction of the names; that having done this they left, and on the next day the so-called Mayer returned to the printing office in company with a young man whom deponent knows, but whose name he cannot at this moment recollect; having asked for the counter-proof, deponent presented it to him for the purpose of having him correct it, as was in fact done in the presence of deponent, whereupon he left, making a request similar to the one of the day before. 349

After these occurrences said Mayer himself returned to the printing office some four or five times, he himself receiving the printed matter in different quantities, always showing a desire that the work of printing should be terminated quickly.

Deponent further declares that the printing included the printing of the tickets, which were made in the form prescribed by Mayer and by Mr. Berjes.

Being asked who paid him for the printing, and what were the circumstances in regard to such payment, he answered : that he has not received one 350
cent for his work and that the value thereof is One hundred and fifteen Dollars ($115);—that it being the custom to charge for work of this kind in cases where a series of performances is to be given at the time that the first performance is inaugurated, he delayed presenting his bill until the time referred to, which time, as is well known, never arrived because the said so-called Mayer disappeared, it being a matter of public notoriety that he had acted in every way with absolute and complete falseness.

Being asked whether or not he attempted to collect the amount of his bill from Mr. Berjes, he 351
answered ; that as a matter of fact he did address himself to said Berjes, sending him word that he, Berjes, having presented the said Mayer at the printing office, deponent considered that he had a right to call upon him to pay for his work ; said application, however resulted in nothing, for the reason that Berjes answered that he had simply accompanied Mayer, he himself having in turn been presented to him.

Being asked if he had no suspicions as to whether said Mayer had any other name, and whether he was acting falsely in all things relating to his assumption of the character of representative

352 of the Abbey Management, he answered; that at first he suspected nothing, because as said Mayer spoke only French and English he had no opportunity to detect anything as deponent had in his establishment clerks who spoke both languages and who acted as interpreters whenever Mayer called alone. The time before the last however, when he visited the printing office, deponent was alone, it being between 1 and 2 o'clock in the afternoon, the hour when the clerks had gone out for their dinner: Mayer arrived and spoke in French to deponent, and deponent not being able to understand him perfectly, said Mayer explained to him in Spanish the urgent need he was in to
353 receive the programmes that same afternoon; deponent was exceedingly surprised that he should be able to express himself in this manner in Spanish, Mayer never before having addressed him a single word, excepting in English or French, pretending that he was ignorant of the Spanish language; deponent was further surprised at the fact that the expressions which he made use of in Spanish were without difficulty and even without the accent peculiar to those who are not accustomed to speak that language, that notwithstanding his surprise he did not do more at that time than simply to communicate the fact to some of his clerks; that
354 on the following day he learned of the disappearance of the said Mayer.

Being asked whether he had anything further to add, he answered; that what he has stated is true to his own knowledge, and that he has nothing further to add; wherefore, having read to him his declaration he confirmed the protest which he had made to speak the truth, and he ratified it in all its parts, signing the same with the subscribing Inspector General of Police and the Secretary who issues these presents.

Timoteo Macias—a flourish,—Luis Caraballeda—a flourish,—Antonio Z. Rojas—a flourish,—Secretary.

In order that the above may have legal effect, I issue the present certificate in Mexico on the twenty-fourth day of January, one thousand eight hundred and eighty eight. 355

LUIS CARABALLEDA.

GOVERNMENT OF THE
FEDERAL DISTRICT,
January 27th, 1888.
Mexico.

I, JOSE CEBALLOS, Governor of the Federal District, do hereby certify that the foregoing signature is that of the Citizen General, Luis Caraballeda, Inspector-General of Police of this capital. 356

MEXICO, January 27th, 1888.

JOSE CEBALLOS.

SECRETARY OF
FOREIGN RELATIONS,
MEXICO.

No. 683. Free of duty.

The subscribing Chief Clerk *ad interim* of Department of Foreign Relations, hereby certifies that Mr. Jose Ceballos is Governor of the Federal District, and that the above is his signature. 357

MEXICO, January 28th, 1888.

JOSE T. DE CUELLAR.

STATE OF NEW YORK, }
City and County of New York. } ss.:

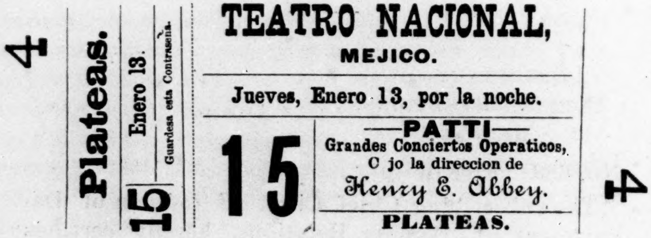
S. MALLET-PREVOST, being duly sworn, deposes and says:

358 That he is acquainted with the Spanish and English languages, and is accustomed to translate the same; that the foregoing is a true and correct translation from the Spanish into English of a certain document, purporting to be a certificate under the hand and seal of the Inspector-General of Police of the Federal District of Mexico, issued from his office in Mexico City on the Twenty-fourth day of January, one thousand eight hundred and eighty-eight.

Sworn and subscribed to
before me, this 11th
day of February, 1888.

359

Defendant's Exhibit 1, Jan. 20, '88.



4

Plateas.

Enero 13.

15

Guardesa esta Contraseña.

TEATRO NACIONAL,

MEJICO.

Jueves, Enero 13, por la noche.

15

—PATTI—

Grandes Conciertos Operaticos,

C jo la direccion de

Henry E. Abbey.

PLATEAS.

4

360

The President of the United States to Martin T. McMahon, Marshal of the United States for the Southern District of New York, and James P. Keating, Warden of the Jail of New York City and County. Greeting: 361

TO BRING UP PERSON.
HAB. COR.

[SEAL.]

We command you, That you have the body of George Benson, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said George Benson shall be called or charged before the Circuit Court of the 362 United States for the Southern District of New York, at the Court Room thereof, in the City of New York, on the 21st day of February, 1888, at 11 o'clock in the forenoon, to do and receive what shall then and there be considered concerning him, and have you then and there this writ.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, the 17th day of February, one thousand eight hundred and 363 eighty-eight.

TIMOTHY GRIFFITH,
Clerk.

ROGER M. SHERMAN,
Attorney,
56 Wall Street,
N. Y. City.

[ENDORSED.]

The within writ is allowed Feby. 16th, 1888.

SAM'L BLATCHFORD,
Associate Justice of the Supreme
Court of the United States.

364 N. YORK, Feby. 21/88.

In obedience to the within writ I herewith produce the body of the within named person, George Benson, together with the Commissioner's writ upon which he is now held.

M. T. McMAHON,
U. S. Marshal.
By R. L. BURNETT,
Dep. Mar.

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365 The President of the United States to Samuel H. Lyman, Esq., a Commissioner of the Circuit Court of the United States for the Southern District of New York, Greeting :

CERTIORARI TO CERTIFY CAUSE OF DETENTION.

[SEAL.]

We command you, That you certify fully and at large to the Circuit Court of the United States for the Southern District of New York, at the Court Room thereof, in the City of New York, on the 21st day of February, 1888, at 11 o'clock A. M., the day and cause of the imprisonment of George Benson, 366 and true copies of the proceedings, complaints, warrants, depositions, trials, examinations, determinations, commitments and record before you therein, by whatsoever name the said George Benson shall be called or charged ; and have you then this writ.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, the 17th day of February, 1888. 367

TIMOTHY GRIFFITH,
Clerk.

ROGER M. SHERMAN,
Attorney for Petitioner,
56 Wall Street,
N. Y. City.

[ENDORSED.]

The within writ is allowed Feby. 16th, 1888.

SAM'L BLATCHFORD,
Associate Justice of the Supreme 368
Court of the United States.

369

370
UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter
of
Extradition of GEORGE BENSON.

For Relator:
PETER MITCHELL, Esq.;

371 For Respondent:
S. MALLET-PREVOST, Esq.;
DELANCEY NICOLL, Esq.

I.

The first point raised by the relator is, that the theatre ticket which is the subject of the charge was wholly printed and not written.

Counsel cites from Blackstone, Bishop, East and Russell definitions of the crime of forgery at common law which describe it as the false making, &c., of a *writing* or written instrument. It was
372 elementary law, however, long before Blackstone's day that printing is writing in the legal sense of the term, and an instrument, the words of which are printed either wholly or in part, is equally valid with an instrument witten by pen. Signature by impression from a stamp was, no doubt, infrequent when its use by Mr. Crawford, Secretary of the Treasury, was approved, but the necessities of modern business have made it a common practice, and of its validity under the common law there can be no doubt. *Vide* Law Dictionaries of Burrill and Abbott under word "writing; 2 Black. Com. 297; 1, Opinions of Attorney General. 670; Sanderson *vs.* Jackson, 3 Esp., 180; Same *vs.* Same, 2 Bos. & P.

258; Clason *vs.* Bailey, 14 Johns., 490; Henshaw *vs.* 373
Foster, 9 Pick., 312; and cases cited on the argument.

II.

The relator next contends that forgery at common law cannot be predicated of such a ticket as this because it did not contain a contract; there was no consideration expressed in it, nor did it contain any promise.

The very definitions, however, which he cites under his first point speak of the written instrument as one which "if genuine might apparently
be of legal efficacy, or the foundation of a legal lia- 374
bility"—or by which another may be prejudiced." It is not necessary that the subject of forgery be shown to be a complete executory contract expressing a consideration. Instruments of evidence by which a contract is proved may be forged just as well as the contract itself, if wholly expressed in writing. (See Opinion of Judge Brown, in this circuit *In re* extradition of Tully, 20 Fed. Rep. 812).

There is a line of authorities, many of which are cited by the relator, which hold that where the forged instrument purports to be a contract and
is void on its face, it is not the subject of for- 375
gery. Thus in *King* vs. *Jones*, 1 Leach's Crown Law the bogus bank-note was void on its face, it would not have been a bank-note if genuine and no outside testimony could have made it such. In *R. S. Mitchell.* Foster's C. C., 119, the forged order was held not to be an order within the terms of the special statute under which the prisoner was indicted. Here, as relator contends, the case must be decided by the rules of the common law. In *Rex* vs. *Pateman*, Russell & R. C. C. Res, 453, the bogus instrument was unsigned and, therefore, if genuine, did not purport to be a promissory note. In *King* vs. *Moffatt*, 1 Leach Cr. Law, 431, the bill

376 of exchange, if real, would not have been valid, because it failed to comply with statutory requirements; no evidence could make it valid. In *Queen* vs. *Closs*, 1 Dearsley & Bell C. C., 460, the Court merely held that n picture was not a document or writing. In the matter of *Chas. Windsor*, 10 Cox C. C., 121, the prisoner was discharged because the false entries which he made did not purport to be made by another. In *People* vs. *Savage*, 5 N. Y. Crim. Rep., 543, where defendant was charged with forging and altering a pawn ticket, the conviction was reversed because the District Attorney and the Court were apparently satified with the soundness of the contention of prisoner's counsel that by the
377 Penal Code of New York, under which the trial was had, the definition of forgery is much narrower than at common law. In *People* vs. *Martin* (N. Y. Sup. Ct., 1885, MS.), the railroad bonds were unsigned, and the same was the case in *People* vs. *Cunningham*, 4 Hun, 457. In *People* vs. *Fitch*, 1 Wend., 198, the prisoner altered the date of an order drawn by him, accepted paid and theretofore returned him. In *People* vs. *Wilson*, 6 John., 320, the bank note being for less than $1, its circulation was forbidden by statute. In *People* vs. *Harrison*, 8 Barb., 560, the acknowledgment was defective
378 on its face. In *People* vs. *Mann*, 75 N. Y., 484, the prisoner, a county treasurer, signed his own name to the obligation; conviction was reversed because the instrument did not purport to be the act of another, it was a false assumption of authority, not forgery. It is, moreover, well settled by authority that where the forged instrument is not void on its face, but only incomplete or uncertain, extrinsic evidence may be introduced showing its validity. Such an incomplete instrument may be the subject of forgery. There is nothing upon the face of these tickets which proclaims them void. They are in the usual form of such instruments which do not ordinarily contain the expression of

a consideration, or a distinct agreement, expressed 379
in words, to admit the holder. None the less, the
holders of them, if genuine, would find them of
legal efficacy if, the performance being given, they
were arbitrarily refused admission, and came into
Court to enforce their rights.

In addition to the numerous authorities in support of these propositions cited in the complainant's brief, it will be sufficient to refer to *People* vs.
Stearns, 21 Wend., 9; *Commonwealth* vs. *Ayer*, 3
Cush., 151; *McCrea* vs. *Marsh*, 12 Gray, 211;
Drew vs. *Peer*, 93 Pa. St., 234; *Wood* vs. *Lead-*
britter, 13 M. & W.; *Taylor* vs. *Waters*, 7 Tannt.,
374; *Barton* vs. *Sherff*, 1 Allen, 133; *McGoverney* 380
vs. *Staples*, 7 Lansing, 145.

III.

The relator contends that the documentary evidence submitted was not accompanied by a certificate of the principal diplomatic or consular officer of the United States resident in Mexico, stating clearly that it is properly and legally authenticated, so as to entitle it to be received in evidence in support of the same criminal charge by the tribunals of Mexico.

The certificates are undoubtedly defective, but
Judge Blatchford *in re* Fowler, 18 Blatch., 437, 381
held that authentication may be made by oral
proof given here. (See also *in re* McPhun, 30 Fed.
Rep., 57, *in re* Wadge, 15 Fed. Rep., 865, 16 Id., 333.)
The evidence in support of the certificates in this
case which was given by the witness Alas, was, under the rules laid down in these cases, competent
and sufficient.

April 9th, 1888.

E. HENRY LACOMBE.

382 At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held in the Post Office building in the City of New York, on the 13th day of April, 1888.

Present—Hon. E. HENRY LACOMBE, Circuit Judge.

In the Matter

of

383 The Petition of GEORGE BENSON for a writ of *habeas corpus.*

A petition for the writs of *habeas corpus* and *certiorari* having been heretofore duly filed herein, and the writs aforesaid duly issued and returns thereto being duly made to this Court, and the body of the petitioner being before the Court in pursuance of the writ; now, upon said records and returns, and upon all the proceedings thereby appearing, after hearing Peter Mitchell, Esq., in support of the petition, and DeLancey Nicoll, Esq., 384 and S. Mallet-Prevost, Esq., for the Consul-General of Mexico, the complainant, opposed,

Ordered, That the writ of *habeas corpus* be, and the same is, hereby discharged; that the petitioner remain in the custody of the Marshal of the United States for the Southern District of New York, pending such application on appeal as petitioner may be advised to make to a Justice of the Supreme Court of the United States, pursuant to the 34th rule of that Court; or until the further order of this Court, upon notice by said complainant after twenty days from the date of this order.

E. HENRY LACOMBE.

IN THE 385

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Matter

of

The Petition of GEORGE BENSON
for a writ of *habeas corpus*.

386 The petitioner above-named, conceiving himself aggrieved by the final decision and order entered on the 13th day of April, 1888, in the matter above-entitled, doth hereby appeal therefrom to the Supreme Court of the United States, and he prays that a transcript of the record, proceedings and evidence in said matter, duly authenticated, may be sent to said Supreme Court.

ROGER M. SHERMAN.
Attorney for Petitioner,
56 Wall St.,
New York City.

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The foregoing appeal is hereby allowed, and it is ordered that a transcript of the petition, writ of of *habeas corpus*, return thereto and other proceedings, be forthwith sent by the Clerk of said Circuit Court to said Supreme Court of the United States at the city of Washington, in the District of Columbia.

April 19th, 1888.

SAML. BLATCHFORD,
Associate Justice of the Supreme
Court of the United States.

388 *United States of America*, ss.:

To Martin T. McMahon, Esq., Marshal of the United States, for the Southern District of New York; and,

Juan N. Navarro, Esq., Consul General of the Republic of Mexico.

Greeting:—Your are hereby cited and admonished to be and appear at a Supreme Court of the
United States to be holden at Washington, on the
23d day of April, instant, pursuant to an appeal
filed in the Clerk's office of the Circuit Court of the
United States for the Southern District of New York,
389 wherein George Benson is appellant, and you are
appellees, to show cause, if any there be, why the
judgment or order, in the said appeal mentioned,
should not be corrected, and speedy justice should
not be done to the parties, in that behalf.

Witness the Honorable Samuel Blatchford, an Associate Justice of the Supreme Court of the United States, on the 19th day of April, 1888.

Saml. Blatchford,
A. J. S. C.

Supreme Court of the United States.

George Benson, Appellant,
vs.
Juan N. Navarro, Consul General of the Republic of Mexico,
Appellee.

It is hereby stipulated and agreed that the original exhibits herein may be transmitted by the clerk of the circuit court of the United States for the southern district of New York, with the record on appeal herein, to the Supreme Court of the United States, the same to be returned to the files of the said circuit court immediately upon the determination of this appeal.

PETER MITCHELL.
Att'y & Counsel for Appellant.
S. MALLET-PREVOST,
Att'y & Counsel for Appellees.

Dated New York April 27, 1888.

Ordered accordingly.

UNITED STATES OF AMERICA, } ss.: 391
Southern District of New York. }

I, TIMOTHY GRIFFITH, Clerk of the Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify, that the foregoing pages, numbered from one to 130 — inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the case of George Benson, Appellant vs. Juan N. Navarro Consul of the Republic of Mexico, Appellee as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 27th day of April in the year of our Lord, one thousand eighty hundred and eighty-eight and of the independence of the said United States, the one hundred and twelfth. 392

Timothy Griffith
Clerk

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7-4159

Office Supreme Court U. S.
FILED
APR 30 1888
JAMES H. McKENNEY

SUPREME COURT OF THE UNITED STATES.

GEORGE BENSON,
Appellant,

vs.

JUAN N. NAVARRO, MEXICAN CONSUL GENERAL,
AND THE REPUBLIC OF MEXICO,
Appellees.

BRIEF FOR APPELLANT.

PETER MITCHELL,
Attorney and Counsel for Appellant.

Supreme Court of the United States.

George Benson,
Appellant,

against

Juan N. Navarro and the Republic of Mexico,
Appellees.

Brief for Appellant.

Statement.

This is an appeal from a decision of the Circuit Court of the United States, for the Southern District of New York, dismissing the writ of *habeas corpus* issued on behalf of the appellant herein.

The appellant was arrested on the 14th day of January, 1888, upon a complaint made by Juan N. Navarro, the Consul General of Mexico, charging the appellant with having committed the crime of forgery in the City of Mexico, in the Republic of Mexico, on or about the 28th, 29th and 30th days of November, 1886. The averments in the complaint charge the appellant with having forged the name of Henry E. Abbey to a theatre ticket, and with uttering the same, with intent to defraud the said Abbey and several other persons in the City of Mexico. The complaint also avers that the defendant herein forged a stamp or seal, purporting to be the private stamp or seal of said Henry E. Abbey. There are other averments in the complaint, which were disposed of at the hearing before the Commissioner, and held to be untenable. So that the only charge upon which the defendant is now held, is that of forging the name of the said Abbey, as above specified.

The Mexican Government have made a requisition upon the United States Government for the extradition of the appellant.

After the arrest of the defendant, he was taken before U. S. Commissioner Samuel H. Lyman, a hearing was had before the Commissioner, and several witnesses were called to testify, and did so testify, against the defendant.

The counsel who appeared on behalf of the Mexican Government, requested adjournments from time to time, for the purpose of enabling them to procure documentary evidence from Mexico and the requisition for the extradition of the defendant from this country to the Republic of Mexico. The Commissioner adjourned the hearing at their request, to enable them to produce the requisition and the documentary evidence to sustain the charge made by the Consul General, on information and belief, charging the defendant with having committed said crime of forgery in Mexico. At the next hearing before the Commissioner, as will appear by the record herein, the requisition papers and depositions to sustain the charge were received by the counsel for the Mexican Government, and were suppressed by said counsel, for the reasons stated by them, as appears by the record at pages 89 to 94 inclusive : that the requisition and depositions received contained only a charge against the defendant of having committed the crime of false pretenses, and not forgery. Counsel, therefore, while admitting that the requisition papers only charged the defendant with having committed the crime of false pretenses in Mexico, requested a further adjournment to enable them to obtain the new requisition papers, charging the defendant with having committed the crime of forgery, instead of false pretenses. This new charge of forgery appears to have been formulated only after telegraphic dispatches had beensent by said counsel to the authorities in Mexico, informing the Mexican government that counsel requested that a charge of forgery be made against the defendant, and that the necessary papers be forwarded containing such charge.

It will be observed that the law officers of Mexico, in the first instance formulated a charge of false pretenses against the defendant herein, and that such charge was subsequently changed *only* after the telegraphic communications had been received from their counsel, presumably informing them of the fact that false pretenses were not embraced within the provisions of the treaty between the United States and Mexico, and that the defendant herein could not be extradited and sent to Mexico unless the charge against him was changed from false pretenses to forgery—a strange proceeding, to say the least.

Upon the arrival of the new extradition papers a supplemental charge was formulated, and examinations were held from time to time, and testimony taken, and at the close of such examinations, Commissioner Lyman committed the accused, and held him to await the action of the Secretary of State and the President of the United States.

Counsel for the appellant then procured the issuance of a writ of *habeas corpus*, directed to the United States Marshal of this District, and a writ of *certiorari*, directed to United States Commissioner Lyman, requiring them to show cause why the appellant was detained in custody. The returns have been made to said writs, which brought the appellant's case properly before the Circuit Court of the United States for the Southern District of New York. The question to be determined is, whether the defendant has committed a crime, which comes within the provisions of the treaty between the United States' government and the Republic of Mexico, bearing date "Mexico, December 11, 1861."

The said writs were returnable and heard before Hon. E. Henry Lacombe, Judge of the Circuit Court of the United States for the Southern District of New York, who dismissed said writs and remanded the appellant to await the warrant for his extradition. From such decision the appellant now appeals to this Court.

ASSIGNMENTS OF ERROR.

The appellant assigns the following as grounds of error upon this appeal.

I.—That the complaint herein does not set forth the crime of forgery under the common law.

II.—The Court erred in refusing to strike out the testimony of Henry E. Abbey and Marcus R. Mayer.

III.—The Court erred in admitting the testimony of John W. Foster to prove the laws of Mexico, or the authentication of the requisition papers herein.

IV.—The Court erred in admitting the requisition and documentary evidence.

V.—The Court erred in admitting the testimony of Ignacio Alas to prove the law of Mexico.

VI.—The Court erred in admitting the Mexican Codes in evidence.

VII.—The Court erred in admitting the said Mexican Codes in evidence, as said codes were adopted subsequent to the establishment of the treaty between the United States and Mexico.

POINTS.

I.

An appeal lies to this Court from the decision of the Circuit Court dismissing a writ of *habeas corpus*.

> Carper *vs*. Fitzgerald, 121 U.S. Supreme Court R., 87.
>
> The act of March 3, 1885, C. 353, 23, Stat. 437.

The main question to be determined herein is whether the acts alleged against the defendant constituted the crime of forgery under the common law of the United States, and not under the law of a State. For the reason that in extradition cases a State cannot be constitutionally known to any foreign nation, inasmuch as the whole subject of foreign intercourse is committed to the Federal government.

People *vs.* Curtis, 50 N. Y., 321.
In the Matter of Charles Windsor, 10 Cox's Criminal cases, 121.
In re Eno, Spear on the Law of Extradition, 276. Clark's Treatise on Extradition, 131, 134.
Legal News, vol. 7, pp. 360-361.
Quebec Law Rep., vol. 10, p. 194.
In re Tully, 20 Federal Reporter, 816.

DEFINITION OF FORGERY AT COMMON LAW.

"Forgery at the Common Law, is the false making or materially altering, with intent to defraud, "of any writing which, if genuine, might apparently be of legal efficacy, or the foundation of a "legal liability."

2 Bishop's Criminal Law, 7th ed., Sec. 523.
1 Barbour's Criminal Law, 3d ed., 173.
4 Blackstone's Commentaries, 247.
Principles of the Criminal Law of Scotland, by Alison.
3 Chitty's Criminal Law, 1022.

Mr, East, in his work, East's Crown Law, at page 840, defines forgery to be "the false making or "alteration of any written instrument, whereby "another may be prejudiced, with intent to de"ceive and defraud."

Russell in his work, Russell on Crimes, at page and section 708 and 709, says: "Forgery at com"mon law has been defined as the fraudulent mak"ing or alteration of a writing to the prejudice of "another man's right,' or more recently as 'a false "making *malo animo* of any written instrument "for the purpose of fraud and deceit,' the word "'making' in this last definition being considered "as every alteration of, or addition to, a true in-"strument."

It is manifest that forgery at common law must be a forgery of a writing, and purport to be the act of another, uttered with intent to defraud. Wherever it appears in any report of a criminal case, on a conviction for forgery, that the instrument was wholly printed, and not written, nor having any written signature in the instrument which was forged, it will be found that such cases come within some statute enacted by Parliament, or within some of the statutes of the several States of the United States on this subject.

See the case of People *vs.* Rhoner, 4 Park, 166.

Statutes were enacted to punish the crime of forgery as early as the fourteenth century; for it was during this period that statutes were enacted making many offenses punishable as forgery that were not so under the common law.

25 Edward III., St. 5 C. 2.
1 Henry V., C. 3 (A. D. 1413).
5 Elizabeth, C. 14 (A. D. 1462).

See also 24 & 25 Victoria.

Many of the modern and recent decisions on the subject of forgery in the English reports have reference to statutory offenses only.

The ticket which the defendant is charged with having forged and uttered was a printed ticket. There was no writing upon it. It did not contain a contract; there was no consideration expressed in it, nor did it contain any promise to admit the holder to the theatre, nor did it contain the words "Good for this evening."

SPECIMEN TICKETS.

The red ticket as the following printed upon it:

"Teatro Nacional
"Adelina Patti
"Henry E. Abbey
"Company."

It also has a printed stamp upon it, which reads as follows:

"Henry E. Abbey Company, Patti,
"Mexico, January 7th, 1887."

A THEATRE TICKET IS ONLY A LICENSE.

In the case of Julian B. McCrea against Robert G. Marsh, 12 Gray, 211; it was held that a theatre ticket is only a license to enter a part of the theatre specified upon it, and if before the holder has entered the licenser, with no more force than is necessary for the purpose, prevents him from entering, he cannot maintain an action of tort for the exclusion.

See Mendenhall *vs.* Klinck, 51 N. Y., 246.
Wood *vs.* Leadbitter, 13 Meeson & Wellsby's, 838.
Purcell *vs.* Daly, 19 Abbotts' New Cases, 301.

Appellant insists that the specimen theatre ticket above set forth is a false token and not a forgery at the common law, and he cites the following cases in support of the proposition.

The King *vs.* William Jones, 1 Leach's
Crown Law, pages 204, 205, 206 ;

"At Chelmsford, 21st July, 1779, William Jones, "otherwise Thorowgood, was indicted before Lord "Mansfield, on the statute, 15 Geo. II., c. 23, s. II, "for that he, having in his custody a certain forged "*paper-writing*, purporting to be a bank note (de-"scribing it) as followeth ; that is to say :

"'No. F , 946,

"I promise to pay John Wilson, Esq., or bearer, "'ten pounds.

"LONDON, March 4, 1776.

"For self and Company of my
"Bank in England."

"£ Ten.

"Entd. *John Jones*

"did depose of and put away the said forged "paper-writing as and for a good and true bank-"note, well knowing the same to be forged."

The jury acquitted the defendant on some of the counts in the indictment, and found a special verdict on other counts.

"On Wednesday, the 24th of November, 1779, this "special verdict was argued in the Court of King's "Bench by *Fielding* on the part of the prosecu-"tion, and by *Mingay* on the part of the prisoner. "And the question was, whether this paper-writing "purported to be a *bank-note?*"

"The Court were of opinion, That the representa-"tion which the prisoner had made to *Rayner*, "*viz.*, that it was a good bank-note, could not "alter the purport of it, which is what appears "upon the face of the instrument itself; for al- "though such *false* representations might make "the party guilty of a fraud or cheat, they could "not make him guilty of a felony.

"The prisoner was therefore discharged."

MARY MITCHELL'S CASE.

"'At the *Lent* assizes, 1754, for the county of "Kent *Mary Mitchell* was indicted on the staute "of the 7th of the King for feloniously uttering "and publishing a certain false, forged and coun- "terfeit warrant and order for the delivery of "goods, purporting to have been signed by one "*George May*, knowing the same to be false, "forged and counterfeit, with intent to defraud "one *William Jeffreys* of the several goods men- "tioned in the order; and upon very full evidence "she was found guilty; but Mr. Justice Foster, "before whom she was tried, thought it advisable "to respite judgment upon a doubt, whether the "order set forth in the indictment be such *warrant* "*or order*, as bringeth the prisoner's case within "the statute."

The order was to this effect:

"OCT. 16TH, 1753.

"*Mr. Jefferys.*

"*I desire you to let this woman have six* "*yards of ordinary stuff, one pair of stock-* "*ings, one shirt, one apron, one handker-* "*chief, and I will see it all paid for.*

"Witness my hand,

"GEORGE MAY."

The case was reserved.

" And upon a conference among the judges on
" the 5th of July, 1754, at Lord Chief-Justice
" Ryder's chambers, nine of them were clearly of
" opinion, that this writing is not a warrant or
" order for the delivery of goods within the meaning of the act. One doubted, but acquiesced;
" another dissented; Mr. Baron Legge was absent.

" At the next assizes, the prisoner was called up
" to the bar, and judgment was given, that she be
" discharged from this indictment. And there
" being no other charge against her, she was delivered out of goal."

Foster's Crown Cases, pp. 119, 120, 121.

In Rex *vs.* Richard Pateman, Russell & R. Crown Cases Reserved, 453, " the prisoner was
" tried and convicted before Mr. Justice Richardson, at the Northampton Spring Assizes, in the
" year 1821, of the offense of uttering and publishing as true, a forged promissory note for payment of £40, with intent to defraud.

" It appeared in evidence, that the note in question had been originally issued by the Bedford
" Bank as a one pound note, and was then as follows:

" No. 16,209.

" BEDFORD BANK, £.

" I promise to pay the bearer one pound on demand, here, or at Sir Charles Price, Bart., & Co.,
" bankers, London.

" Value received.

" Bedford, the 17th day of October, 1817.

" FOR BARNARD, BARNARD & GREEN.
" THOS. BARNARD.

" No. 16,209.

" The note was afterwards altered by cutting out " or obliterating the word one, and pasting in or " inserting in the place of it the word forty, and " by cutting off the last line which contained the " signature, and by some other smaller obliterations. The note then stood as follows :

" No. 16,209.

" BEDFORD BANK.

" I promise to pay the bearer fourty pound on " demand, here, or at Sir Charles Price, Bart., & " Co., bankers, London.

" Value received.

" Bedford, the 17th day of October, 1817.

" For BARNARD, BARNARD & GREEN.

" In this form it was uttered by the prisoner, as a " note for forty pounds, and the prosecutor gave " him forty pounds in change for it. In this form " the note was set out in the counts for uttering.

" It was objected by Mariott, for the prisoner, " that the note, as uttered by the prisoner, was incomplete, and was not, nor did it purport to be, a " promissory note, for want of the signature ; and " that, therefore, it was not the subject of forgery " within the statute.

" The learned Judge thought the objection of " great weight , but considering it better to avoid " the public discussion and decision of it at the " Assizes, he reserved the question.

" The jury found the prisoner guilty, and the " learned Judge respited the judgment.

" The question submitted to the Judges was, " whether the note as uttered by the prisoner, was " a promissory note for payment of money within " the statute.

"In Easter Term, 1821, the Judges met, and con-
"sidered this case. They were unanimously of
"opinion that the objection was fatal, and the con-
"viction wrong."

In the case of the King *vs.* Moffatt, 1 Leach's Crown law, page 431:

"At the old bailey, in the January Session, 1787,
"John Moffat was indicted on the Statute 2 Geo.
"II., c. 25, and 7 Geo. II., c. 22, before Mr. Sergeant
"Adair, Recorder, for forging and uttering the
"acceptance to a bill of exchange to the following
"purport:

NAVY OFFICE, 21st, Dec. 1786.

"*Sir*:—

"Seven days after date, please pay to *Mr.*
"*John Moffatt*, or his order, the sum of three
"pounds three shillings, and place the same to ac-
"count of

"WALTER STERLING.

"To GEORGE PETERS, Esq.,
"BANK OF ENGLAND.

"*Accepted*, G. PETERS."

Endorsed "JOHN MOFFATT, now Surgeon of the Scipio Guard Ship at Sherrness."

"The prisoner was found guilty, and the ques-
"tions on the objections taken at the trial were re-
"ferred to the twelve judges in the Court of Kings
"Bench." Mr. Justice Ashurst delivered their unanimous opinion, holding that the case did not come within the statutes of either the 15th or 17th of Geo. III.; and that the bill of exchange (in question), if real, would not have been valid or negoti-

able, and, therefore, the forging of it was not a capital offense.

In the case of the Queen *vs.* Thomas Closs, 1 Dearsley's & Bell's C. C., page 460 (1858),

The prisoner was convicted of the crime of forgery for putting an artist's name in the corner of a picture, in order to pass it off as an original picture by that artist; Cockburn, C. J., delivering the opinion of the Court, said: "A forgery "must be of some document or writing; "and this was merely in the nature of a mark "put upon the painting with a view of identifying "it, and was no more than if the painter put any "other arbitrary mark, as a recognition of the picture being his. * * * Stamping a name on a "gun would not be a writing; it would be the imitation of a mark, *not of a signature.* * * * "If you go beyond writing, where are you to stop? "Can sculpture be the subject of forgery?" Conviction quashed.

In the matter of Charles Windsor (10 Cox's Criminal Cases, 121), the prisoner was arrested in England, charged with having committed the crime of forgery in the city of New York, while paying teller of the Mercantile Bank, and thereby taking $35,000 from said bank. He was taken before Sir Thomas Henry, at the Bow Street Court, and committed for extradition to the United States. The acts charged against Windsor were those of making false entries in the books of the bank, which enabled him to appropriate the said $30,000; and it was claimed by the prosecutor and the United States Government that the acts charged against Windsor constituted forgery. An appeal was taken from the decision of the Judge committing Windsor to await extradition.

Lord Chief Justice Cockburn delivered the opinion of the Appellate Court, discharging the prisoner, said: Windsor's offence did not constitute forgery under the law of England and the United States.

In re extradition of Tully, Circuit Court, S. D. New York, June 18, 1884, the prisoner, Gerald Thomas Tully, was arrested on a charge of forgery committed in England; he was committed for extradition by the United States Commissioner; he was brought before Brown, J., upon writs of *habeas corpus and certiorari;* and on a careful examination of the testimony taken before the Commissioner, he was discharged, upon the authority of the Charles Windsor case, cited *supra*

Brown, J., in delivering his opinion, said:

"In all these cases the distinction seems to me to
" turn upon the question whether the instrument
" has, or can be made to have, ANY LEGAL FORCE OR
" EFFECT, IN ITSELF CONSIDERED, against any other
" person than him who makes the false statement
" or alteration. If it has, and is designed and cal-
" culated to deceive, it is forgery, otherwise not."

20 Fed. Rep., 812 to 818.
See Regina *vs.* White, 2 Carrington & Curwin, p. 404.

In the case of the People *vs.* Savage, N. Y. Supreme Court, General Term, (May, 1887.) Mss., the appellant and defendant Savage was convicted of the crime of forgery in the second degree at the Court of General Sessions, in the city of New York, and sentenced to the State Prison for the term of five years. The indictment charged the defendant with forging and uttering the following pawn ticket :

"No. 17,485.
"J. Harris & Son.
"245 Court Street,
"Near Baltic, Brooklyn.
"Sept. 6, 1886,
"Diamond
"Stud. $50.
"Jackson
"Good for one year.
"Not accountable in case of fire, damage,
"Robbery, breakage or moth,"

with intent to defraud. It was proved on the trial that the prisoner obtained $5 from the prosecutor. On appeal, the conviction was reversed, and the prisoner discharged: The Court were unanimous in their opinion that the instrument, although false, was not the subject of forgery.

In the case of the People *vs.* Louis R. Martin, the defendant was indicted for forging a thousand dollar bond, with coupons attached, of the Morris & Essex Railroad, the payments of which were guaranteed by the Delaware, Lackawanna & Western Railroad Company. He was tried and convicted in the Court of General Sessions, in the City of New York, in May, 1884, and sentenced by Hon. Rufus B. Cowing, City Judge, to be imprisoned in the State prison for the term of ten years. A stay of proceedings was granted, and an appeal taken to the General Term of the Supreme Court, First Department, May Term, 1885, where the conviction was reversed. The Court were unanimous in their opinion that the instrument was invalid on its face, being incomplete, and, therefore, that the defendant was not guilty of the crime of forgery. He was subsequently discharged.

People vs. Martin 36 Hun. 462

In the case of the People *vs.* Cunningham, 4 Hun, 457, Brady, J. P., writing for reversal of the conviction of the defendant and appellant for the crime of forgery, used the following language:
"The rule established by the adjudications in this
"State, and, after a thorough consideration of the
"question, is, that if the instrument be invalid on
"its face, it cannot be the subject of forgery, be-
"cause it has no legal tendency to effect a fraud."

See also:

People *vs.* Shall, 9 Cow., 778.
People *vs.* Fitch, 1 Wend., 198.
People *vs.* Wiltoon, 6 Johns., 320.
People *vs.* Stearns, 21 Wend., 409.
People *vs.* Harrison, 8 Barb., 560.
People *vs.* Mann, 75 N. Y., 484.

In the case of the People *vs.* Shall, 9 Cowen, 782, the prisoner was indicted and convicted in the Court of Oyer and Terminer, in Montgomery County, on the 17th of November, 1829, for forging a certain instrument in writing, which was averred in the indictment to be a promissory note, which reads as follows:

"Three months after date, I promise to pay Se-
"bastian I. Shall, or bearer, the sum of three dol-
"lars, in shoemaking, at cash price; the work to
"be done at his dwelling house, near Simon Vro-
"man, in Minden.

"DAVID W. HOUGHTAILING.

"MINDEN, August 4th, 1826."

An appeal was taken to the Court of Errors, where the conviction was reversed, and judgment arrested, and the prisoner discharged.

Cowan, J. P., delivering the opinion of the Court, said; "That false writing, purporting " to be nothing of itself, may be put to some " fancied use as an ingredient in the work of mischief, " cannot be the criterion of forgery. * * * "The instrument, to be the subject " of forgery, must purport on the face of it to be " good and valid for the purpose for which it was " created. This, says Mr. East, P. C. 853, note (*a*) " 'must be understood in respect to the frame or " terms of the *instrument* or *writing itself.*' I " agree that a man, ignorant of the technical " requisites of a special agreement, might be imposed " upon by the paper in question. This remark " probably embraces a majority of the community " in which we live; and most likely the very " parties named in the false instrument. In this view, " no doubt, the deed of which the defendant stands " convicted, involves all the moral guilt of forgery. " He believed that he had succeeded in fabricating " what purported to be a valid promissory note. " But legal forgery cannot be made out by " imputing a possible or even actual ignorance of the " law to the person intended to be defrauded. " However dark may be the moral hue of a transaction, " Courts of Justice can only act upon legal crime, " upon criminal breaches of perfect legal " obligation. Had this paper been used as a token, and " thus made the medium of actual fraud by the " defendant, he would be punishable as a cheat. The " instrument might, in that relative sense, become " the subject of an indictment. It here stands " alone. And we do not think that legal forgery " can be predicated of such a writing, for the rea-

"son, fully established by authority and principle, that it is not, on the face of the indictment, "of any apparent effect."

The foregoing cases clearly demonstrate that an instrument, which is invalid on its face, containing no contract, or consideration, or promise, nor containing a written signature is not a forgery, either under the common law, or under any of the acts of parliament, or under any of the statutes of any of the States in the United States.

"A mere naked promise, no consideration appearing, creates no legal liability."

2 Bish. Cr. L. (7 Ed.), sec. 546.

Cases Distinguished.

Mr. Wharton, in his work on criminal law, 9th Ed. Vol. 1, sec. 696, says: "Where an instrument "is so palpably and absolutely invalid that it can, "under no circumstances, be proof in a legal procedure, then falsely to make it, is no forgery." Citing authorities in notes 5, 6, 7, 8, 9. 10 and 11.

Referring to tickets which may be the subject of forgery, Mr. Wharton, at section 685, of the same volume, refers to the three following cases in support of his views.

First, the case of the Queen *vs.* Fitch, 9 Cox's Criminal cases, p. 160.

Fitch was indicted for forging a receipt for money, which was called a turnpike ticket. The document, in form. is as follows:

BERMONDSEY, ROTHERHITHE.

$19/_{2}$ and Depford Roads, 1/-
18
Clears Fort-place, East-lane,
Plough-bridge, St. James's,
China Hall, Rotherhithe,
New Road, Gibralter,
Swan-bar, and on all
side-bars of the trust.

This was held to be a forgery under the General Turnpike Act, 3 Geo. IV., c. 126, sec. 37. There was no contention that this ticket, although expressing a consideration, could or would have been a forgery under the common law.

Second, the case of the Commonwealth *vs.* Ray, 3 Gray, 441.

In this case, "the indictment, alleged that the " defendant, on the 13th of July, 1854, at Boston, " did falsely make, forge and counterfeit a certain " writing in the form and similitude of a railroad " ticket or pass, of the tenor following.

NEW YORK CENTRAL RAILROAD,

Albany to Buffalo,

Good this day only, unless endorsed by the conductor.

D. L. FREMYRE,

The prisoner was convicted, and an appeal was taken to the Supreme Court.

Dewey, J., in delivering the opinion of the Court, says: "This false instrument would, if genuine.

"have created a liability on the part of the New "York Central Railroad Company to carry the "holder thereof from Albany to Buffalo, and "would, therefore, have been a contract of value "in the hands of a third person. * * * In "the opinion of the Court, such an instrument "may be the subject of forgery, when the entire "contract, including the signature of the party, "has been printed or engraved."

This conviction was reversed on the ground of variance between the indictment and the proof, and for defective averments in the indictment. But it is apparent from the language of the Court, that the instrument in question was a valid instrument on its face, that it contained a contract, and that it was the exact similitude of the ticket, including the signature used by the Railroad Company, and signed by their ticket clerk and agent. In fact, Bishop, J., at the trial Court instructed the jury that the name of Fremyre was written on the ticket, and that the words on the ticket, taken in connection with the facts agreed, constituted a good and binding contract.

Prior to the time that these instructions were given, it had been held (in Massachusetts) that a railroad ticket was a contract.

See Cheney *vs.* Boston & Maine R. R.,
11 Metc., 121.

This case is clearly distinguishable from the case at bar, because in the appellant's case there was no contract contained in the ticket, nor was it made to resemble any ticket used by Henry E. Abbey, nor did it purport to be signed by Henry E. Abbey. THE STAMP UPON IT, BEING IN TYPE USED BY THE PRINTER, WAS DISSIMILAR TO ANY TICKET OR STAMP EVER USED BY SAID ABBEY.

The mere printing of the words in a CIRCULAR FORM of “Henry E. Abbey Company” upon the face of the ticket does not differ in effect from the PRINTING IN A STRAIGHT-LINE ACROSS THE FACE OF THE TICKET of the words, “Henry E. Abbey Company.” Nor can such words be construed to be applied to the individual Henry E. Abbey, for the reason that “Henry E. Abbey Company” is not the name of a person called “Henry E. Abbey;” because one may refer, and does refer, to a “Company,” whereas the other refers to an individual. This is fatal to the charge contained in the complaint, namely forging the name of Henry E. Abbey, and the variance would be fatal in an indictment. The proof herein shows the name of “Henry E. Abbey Company” to have been printed by a stamp on the ticket—which does not sustain the charge in the complaint of forging the name of Henry E. Abbey.

Third, the case of Regina *vs.* Christopher Boult, 2 Carrington & Curvin, p. 603.

The prisoner was indicted for forging a railroad pass. The indictment, “charged the defendant “with having unlawfully forged ‘a certain WRIT- “ ‘ING, in the words and figures following: that is “ ‘to say,

“ ‘GREAT WESTERN RAILWAY.

“ ‘SIR—Please pass the bearer to Oxford
“ ‘and back on business of the Oxford and
“ ‘Bagley Railway. Yours, &c.,
“ ‘Nov. 8, 1848. (Sig.)
“ ‘GEO. WM. CARRINGTON.’

Pass
John Palmer

“with intent to defraud the Great Western Railway ,‘ Company.”

This was held to be a forgery at the common law because it was an exact similitude of the passes issued by the railway, and entitled the holder thereof —of a genuine pass—to travel on the railway free of charge. This railway pass contained a complete contract, similar to the ticket set forth in the Ray case.

In the case of the State *vs.* Humphreys, 10 Hump., 242, The prisoner was convicted of the crime of forgery. The indictment charged the defendant with uttering the following order:

> "*Mr. Bostwick:* You will please to charge Mr. J. S. Humphrey's account to us up to date.
> Feb. 7, 1849.
> TWYMAN AND TANNEHILL."

This was held to be a forgery on the ground that the instrument (being complete) could have no other effect, if genuine, but to discharge an indebtedness. Judgment was arrested in this case on account of an insufficient averment in the indictment.

The indictment charged that Humphreys did feloniously and fraudulently forge a certain writing, as follows: "Mr. Bostwick—Charge J. S. Humphreys' account to us. Twyman & Tannehill," etc. This indictment was insufficient, because it did not aver that Humphreys was indebted to Bostwick; unless a debt existed, there could be no fraud.

This case clearly illustrates what is meant by the phrase that a false instrument may, in certain cases, be made good by averment in the indictment that there was, as in the above case, certain property to be released, or indebtedness to be discharged.

This doctrine does not apply to a nudum pactum, like the theatre ticket in this case, because it cannot be made good by averment.

An order for the delivery of goods which contained a *forged written signature* was held to be a forgery at common law. The instrument was complete and valid on its face.

Commonwealth *vs*. Ayer, 3 Cushing, p. 151.

Mr. Stephens, in his Digest of the Criminal Law, page 288, Article 336, gives the following illustrations of what were forgeries at common law.

"1. An order from a magistrate to a jailer to
" discharge a prisoner, as upon bail being given.
" R. *vs*. Harris, R. & M., 393."

"2. A certificate of character to induce the
" Trinity House to enable a seaman to act as mas-
" ter."

R. *vs*. Toshack, 1 Den. C. C., 492.

"3. Testimonials whereby the offender obtained
" an appointment as a police constable."

R. *vs*. Moah, D. & B., 550.

"4. The like, with intent to obtain the office of
" a parish school master."

R. *vs*. Sharman, Dear. C. C., 285.

"5. A certificate that a liberated convict was
" gaining his living honestly to obtain an allow-
" ance."

R. *vs*. Mitchell, 2 F. & F., 44.

In each of these cases the instrument was complete, and the signatures to each instrument were false, and in writing. These cases show conclusively that a forgery under the common law must be of a written instrument, meaning thereby that the signature must be in writing and be valid upon its face for the purpose for which it was intended.

DEFINITION OF A SEAL AT COMMON LAW.

An impression upon wax, wafer or some other tenacious substance capable of being impressed.

5 Johns. N. Y., 239.

Lord Coke defines a seal to be wax, with an impression.

3 Inst., 169.
Perkins, 129, 134.
Broke, Abr., Faits, 17, 30.
2 Leon, 21.
2 Caines, N. Y., 362.
21 Pick., Mass., 417.

Merlin defines a seal to be a plate of metal with a flat surface, on which is engraved the arms of a prince or nation, or private individual, or other device, with which an impression may be made on wax, or other substance on paper or parchment, in order to authenticate them: the impression thus made is also called a seal.

Repert. mot Scean.
3 McCord So. C., 583.
5 Whart., Penn., 563.

"Seal—(O Fr., seel, from Latin sigilum, a seal "dim. of signum, a sign, Sign.) A piece of stone, "metal, or other hard substance on which is en-

"graved some figure or inscription, used for making an impression on some soft substance, as on "the wax that makes fast a letter, or is affixed to "documents in token of authenticity; the wax or "other substance so impressed; the wax wafer, or "similar fastening of a letter or other paper; that "which authenticates, confirms or ratifies; assurance: pledge; that which effectually shuts or "secures; that which makes fast. Great seal, a "seal used for the United Kingdom in sealing public papers of great moment. Privy seal, lord "privy seal. See under Privy. To set one's seal "to, to give one's authority to; to give one's assurance of. v. t. To affix a seal to, as a mark of "authenticity; hence, to confirm or ratify; to "establish; to settle; to fasten and mark with a "seal; to fasten securely as with a wafer or with "wax."

Annandale's Concise Dictionary of the English Language (London Ed., 1886), p. 612.

To claim that the printed name of "Henry E. Abbey Company" in circular form is a forgery of a private seal at common law, is rather strained and far fetched reasoning, and untenable in view of the authorities cited on the subject.

There is no proof that Mr. Abbey ever used a stamp or seal, or that the letters in the stamp were ever used in any manner by a Henry E. Abbey Company. Neither the ticket nor the stamp thereon is in any manner similar to a ticket or stamp used by Henry E. Abbey. On the contrary, the ticket used by Henry E. Abbey, during the period in which Madame Adelina Patti was sing-ing at concerts under his direction, bore a facsimile signature, lithographed of Henry E. Abbey.

See the ticket in evidence, marked Defendant's Exhibit A.

It is a significant fact, that has a strong bearing upon this stamp or seal question, that while the preamble and recitals by the Judge of the Criminal Court, in Mexico, who issued the warrant for the arrest of the defendant state that this printed name of "Henry E. Abbey Company" in circular form is a seal. In the depositions taken in Mexico, upon which the warrant was issued, the word "stamp" is used instead of "seal."

II.

IT WAS ERROR TO ADMIT THE REQUISITION, DOCUMENTARY EVIDENCE. THE PENAL AND CRIMINAL CODES OF MEXICO.

CERTIFICATE.

"Each piece of the documentary evidence offered by the agents of the foreign government in support of the charge of criminality should be accompanied by a certificate of the principal diplomatic or consular officer of the United States resident in the foreign country from which the fugitive shall have escaped, stating clearly that it is properly and legally authenticated, so as to entitle it to be received in evidence in support of *the same crimi-*

nal charge by the tribunals of such foreign country."

Opinion by Shipman, J., in

Case of Heinrich, 5 Blatchf., 414, 425,
In re. McPhun. 30 Fed. Rep., 60.

This rule was not complied with. It was conceded that the certificate was defective.

In order to supply the necessary evidence to enable the prosecutor to succeed in having the documentary evidence admitted, two witnesses were called as legal experts who gave oral testimony, which the prosecutor claimed entitled this documentary proof to be admitted.

The first legal expert called was Hon. John W. Foster, ex-Minister to Mexico. He was clearly too incompetent to testify about the contents of the Penal and Criminal Codes of Mexico.

The second legal expert called was Ignacio Alas, a Mexican Consul residing in Chicago. He was also incompetent to give evidence of the contents of the Mexican Codes.

"The usual mode of authenticating foreign law is by an exemplification of a copy, under the great seal of a State; or by a copy proved to be a true copy, by a witness who has examined and compared it with the original; or by the certificate of an officer properly authorized by law to give the copy, which certificate must itself also be duly authenticated."

1 Greenleaf on Evi. (12th Red. ed.), sec. 488, and note 1 on p. 534.
Leonard *vs.* Col. Steam N. Co., 84 N. Y., 48.

" A copy of the code of laws of a foreign nation, printed by order of the foreign government, it seems is not admissible evidence of those laws; but they must be proved as stated in the text."

Greenleaf *Ib.*, note 3 on p. 534.
Chanoine *vs.* Fowler, 3 Wend., 173.
Hill *vs.* Packard, 5 Wend., 355, 393.
U. S. *vs.* Glass Ware, 4 Law Rep., 36.

In the case of People *ex rel.* Lawrence *vs.* Brady, 56 N. Y., 182.

ANDREWS, J., said:

"The Court cannot take judicial notice of the law ot that State; and the presumption in the absence of proof is, that its Courts agree with our own in declaring and interpreting the common law."

The Mexican Consul (Ignacio Alas) proved the statute law (the Mexican Codes), and not the unwritten or common law.

"A printed copy of the Irish statutes, with the oath of a barrister, in Ireland, that he received them from the King's printer in Ireland, and that they are good evidence there, was held admissible.

James *vs.* Maffet, 5 S. & R., 523.
Starkie on Evi. (10th ed.), p. 175, and notes on p. 176.

Laws of a foreign country are not to be noticed by other countries unless proved as facts, and the sanction of an oath is required for their establishment. For a full exposition of the law on this subject.

See Ennis *et al. vs.* Smith *et al.*, 14 Howard, (U. S.) Rep., p. *429.
Wheaton on Inter. Law, p. 143, and note.

III.

VARIANCE BEEWEEN THE AVERMENTS IN THE COMPLAINT AND THE DEPOSITION AND TESTIMONY TAKEN TO SUPPORT SAID AVERMENTS.

The complaint charges the defendant with forging (by means of a stamp) the name of Henry E. Abbey to theatre tickets. The tickets show that Henry E. Abbey Company, was stamped on said tickets. This is surely a fatal variance between the complaint and the proof adduced to support it.

Effect of errors in the name of prosecutor: "A "variance, therefore, or an omission in the name "of the person aggrieved, is much more serious "than a mistake in the name or addition of the "defendant, as the latter can only be taken ad-"vantage of by plea in abatement, while the "former will be ground for arresting the judg-"ment, when the error appears on the record, "or for acquittal, when a variance arises on the "trial."

1 Wharton Criminal Law, 7th Ed., Sec. 256.
East's Pleas of the Crown, p. 514.
2 Leach's Crown Cases, p. 774.
Commonwealth *vs.* Ray, 3 Gray, 441.

There being such a variance between the averments in the complaint in the case at bar and the proof adduced to sustain such averments, the defendant is entitled to his discharge on this point alone.

IV.

CHEATS BY FALSE PRETENSES AND FALSE PERSONATIONS.

The defendant, while not guilty of committing the crime of forgery, may have committed, and probably did commit, the crime known as a cheat under the common law, by falsely personating the brother of Marcus R. Mayer, Henry E. Abbey's agent. It was under this false and assumed character that he ingratiated himself into the confidence of Pablo S. Berges, owner of the Theatre National, in Mexico, and of Edward Orin; and, in that assumed character was taken by Berges to the printer's on the 28th of November, 1886, where the order was given to print the tickets which are the subject of this charge. Those tickets, after being stamped, and this stamp being used only for indentifying them as the tickets sold, and not purporting to be the seal of Henry E. Abbey, but merely put on for the identification of the tickets issued from the box office, were, and are, simply *false tokens*, by which the people were cheated. They were bartered and sold publicly on the 19th, 30th and 31st days of November, 1886; and the concerts (of which they were the tokens) were going to be given in the future, more than a month after the selling of these false tokens. These tickets, being only false tokens, were sold without any representations accompanying the sale to the purchaser of said tickets. To prove that defendant Benson sold the tickets in question will not sustain the complaint herein.

Archbolds Crim. Pleadings. By John
Jarvis, Esq., London Ed., p. 599.

So that the crime, if any, is reduced to a cheat by a false personation and false token under the common law. At no time was there any act performed by the defendant, Benson, which purported to be the act of Henry E. Abbey, all acts of Benson were those committed by him under the false assumption that he was a brother of Marcus R. Mayer, Henry E. Abbey's agent. So that the people of Mexico at no time believed that these tickets were issued by Henry E. Abbey, or that a single act performed by Benson was the act of Abbey.

"Falsely personating another is a misdemeanor
" at common law, and punishable as such."

2 East, Pleas of the Crown, 1010.

"Private cheats are * * * in some
" cases punishable at common law, as the pretend-
" ing to be, and the obtaining credit as, a mer-
" chant, by means of forged letters and commis-
" sions. * * * This is upon the ground
" that the public may be affected, or that the cheat
" is circulated to defraud numbers, and which or-
" dinary care and caution can guard against."

1 Barb. Crim. Law, 3 ed., pp. 220, 221.
Reg. *vs.* Smith, known as the Baking Powder Case,"
Dearsley *vs.* Bell, 566.
The King *vs.* Benjamin Larra, 2 Leach's Crown Cases, pp. 656, 657.
Rex *vs.* William Atkinson, 2 East Crown Law, 673.
2 Leach's Crown Cases, 1066.

If there is any doubt as to the grade of crime that the defendant has committed, it is the duty of the Court, upon common principles of humanity and justice, to look for every fact which may reduce the guilt to the lowest point consistent with the facts proved.

State *vs.* McDonnell, 32 Vermont, 538.

It is submitted that the appellant is not brought (by the proof) within the provisions of the common law rule relating to forgery, or within the clause of the Treaty with Mexico which defines what is included within the term of forgery, and he cannot be brought within the provisions of either, by construction.

"The doctrine is fundamental in English and American law that there can be no constructive offences; that before a man can be punished, his case must be *plainly* and *unmistakably within the statute, and if there be any fair doubt whether the statute embraces it, that doubt is to be resolved in favor of the accused.*"

U. S. *vs.* Morris, 14 Peters, 464.
U. S. *vs.* Wiltberger, 5 Wheat., 76.
U. S. *vs.* Sheldon, 2 Wheat., 119.
1 Bishop's Criminal Law, secs. 134, 145.

"In a criminal prosecution nothing is taken by intendment against the accused. An informal or insufficient allegation of a material fact (in a complaint or indictment, or proceeding as in this case) will not dispense with proof of every fact and circumstance essential and material to constitute the crime charged.

Wood *vs.* The People, 53 N. Y., 514, 515.

"Every criminal, however vile, has a right to require that the elements of his offense shall be clearly defined by law and established by legal proof before he can be convicted thereof, and, until then, he may safely assert his immunity from punishment for any offense which is not thus defined and proved."

The People *vs.* Plath, 100 N. Y., 597.

The appellant invokes this principle.

V.

For the reasons, assigned upon the law and fact herein, the decision of the Circuit Court should be reversed and the appellant should be discharged.

PETER MITCHELL.
Attorney and Counsel for the Appellant.

FILED
[illegible]
JAMES H. McKENNEY

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

In the matter
of
The Application for the Extradition of George Benson, alias Charles Bourton, alias Mayer, under the provision of the Treaty of Extradition between the United States and the Republic of Mexico of December 11th, 1861,
Appellant.

No.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE MEXICAN GOVERNMENT.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEE.

STATEMENT.

The appellant is charged in the complaint with having committed the crime of forgery within the jurisdiction of the Republic of Mexico, by having, on or about December 1st, 1886, in the City of Mexico, fraudulently forged the name of one Henry E. Abbey to a certain ticket of admission to an opera or concert about to be given in said city, under the management of said Henry E. Abbey.

The Appellant, having been committed for extradition by U. S. Commissioner Lyman, was brought before the Circuit Court for the Southern District of New York, upon a writ of *habeas corpus*, and the proceedings before the Commissioner were there examined. After full hearing the Court discharged the writ and remanded the prisoner. The present appeal is from this decision.

The facts of the case are briefly as follows:

Henry E. Abbey was, in the year 1886, engaged in the business of manager of theatrical and operatic entertainments and concerts.

In November of that year a number of operas were given under his management in New York City, and a tour was arranged for December and

January, which included the City of Mexico among the places to be visited by his company.

In anticipation of his visit to that City, Mr. Abbey, through Eduardo Orrin of the City of Mexico, engaged the "*Teatro Nacional*" for one month beginning December st, 1886, and paid the sum of $500 on account of the rent.

He further announced to the public through the newspapers of Mexico that Madame Adelina Patti and other distinguished artists would appear in various operas and concerts to be given under his management in that city.

To Mr. Pablo S. Berges, the owner of the theatre, notice was also given that Mr. Marcus R. Mayer, Mr. Abbey's general business manager and advance agent, would precede Mr. Abbey to the City of Mexico for the purpose of attending to all the preliminary business incident to the giving of the operas.

These arrangements having been made, the appellant, in the month of November, 1886, and while Messrs. Abbey and Mayer were still in the City of New York, called upon these gentlemen and, under the name of Charles Bourton, representing himself to be a correspondent of the Paris *Figaro* and the London *Referee*, interviewed them in regard to their business methods and plans.

From them he learned the facts which have been stated in regard to Mr. Abbey's proposed Mexican tour, and he posted himself thoroughly as to the duties of Mr. Abbey's advance agent and the methods adopted by Mr. Mayer on arriving at a city where entertainments were to be given.

From Mr. Abbey he secured an authograph pass to one of his New York concerts. This pass was never used for the purpose of obtaining admission to the theatre, but the significant fact appears that a letter of recommendation, introducing appellant, under the name of Mayer to Mr. Berges of the City of Mexico, was subsequently received by that gentleman.

This letter, shortly after its receipt, was obtained possession of by appellant, and the prosecution were therefore unable to produce it before the Commissioner.

Having thus made himself thoroughly familiar with Mr. Abbey's plans and with Mr. Mayer's methods and duties, appellant left New York and arrived at Aguas Calientes in the Republic of Mexico on November 26, 1886.

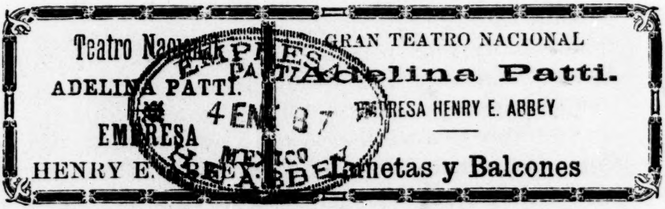
From this place, under the name of "Mayer," he telegraphed to Mr. Berges advising him that he would be at his house the next morning.

On November 28th, he arrived in the City of Mexico, called upon Mr. Berges, and represented himself to be Marcus R. Mayer the business agent of Henry E. Abbey, duly authorized by him to attend to the business incident to the entertainments to be given in Mexico.

In company with Mr. Berges, and having first inquired of him where it was customary to have the printing done, he visited the printing house of the "*Gran Libro*," and having determined upon the form, ordered the requisite number of programmes, hand bills, prospectuses and tickets to be printed for the proposed operas and concerts. The prospectus fixed the price of tickets of admission to the various sections of the house and announced the concerts and operas to be given on the various days.

The ticket excepting as to date and location of seat, were all in the same form.

The following is a fac simile of one for the balcony, dated January 4th, 1887, and shows the stamp or seal upon its face, which in the original is printed in purple ink.



Teatro Na[illegible]
ADELINA PATTI.
EMPRESA
HENRY E. ABBEY

GRAN TEATRO NACIONAL
Adelina Patti.
EMPRESA HENRY E. ABBEY

[illegible]netas y Balcones

EMPRESA
PATTI
4 ENE 87
MEXICO
E. ABBEY

From the printers, appellant accompanied Mr. Berges to see Mr. Eduardo Orrin. Mr. Orrin being personally acquainted with the real Mayer showed signs of surprise upon seeing appellant: his suspicions were, however, quickly allayed when Benson stated that he was Mayer's *brother*, and that Marcus R. Mayer would arrive shortly.

Besides Mr. Orrin, Mr. Berges and a clerk of Orrin's who was present at the interview, were the only persons to whom Benson was known as Mayer's brother.

To the public of Mexico he represented himself to be Marcus R. Mayer himself, the representative and advance agent of Henry E. Abbey.

Upon returning to the theatre, appellant made arrangements for hiring one Alfaro and one Zarate as clerks to aid him in his business, and on November 30th, with their assistance, he sealed or stamped in the manner above indicated the tickets which he had received from the printer.

The sale of tickets was opened on December 1st, 1886, and during this and the day following appellant, through his clerks, sold a large nnmber of tickets to various persons residing in the City of Mexico, realizing and receiving as the proceeds thereof the sum of $24,654.50. Among the purchasers were two witnesses who appeared before the Commissioner, Mr. Pritchard and Mr. Moran: these gentlemen purchased their tickets from the appellant and saw a large number of others sold at the same time.

Upon the night of the 2nd of December, the suspicions of the Mexican Authorities having been arroused. Benson was ordered to deposit the proceeds of the sale of tickets with the Superintendent of the Hotel Yturbide. Although closely watched he managed to place in the bags the sum of only $4,334.50, and having sealed these and deposited them as required, he fled from the City of Mexico carrying the balance with him.

He was arrested in New York upon a warrant issued upon the complaint in this case on January 14th, 1888.

POINTS.

I.

An exception has been taken by the appellant to the form and substance of the complaint on the ground that, it fails to set forth the crime of forgery under the requirements of the rules of pleading under the common law.

The allegations of the complaint are briefly as follows: that Henry E. Abbey was, in 1886, engaged in the business of manager of theatrical and operatic and concert troups and companies: that there was in the City of Mexico at said time a theatre known as the Teatro Nacional, and that in the month of September, 1886, Henry E. Abbey engaged the same for the purpose of giving operas and concerts therein for one month from December 15th, 1886, to January 15th, 1887, and deposited the sum of $500 on account of the rent: that Henry E. Abbey on or about December 1st, 1886, advertised said operas and concerts in the City of Mexico.

"That thereupon said George Benson, alias
" Charles Bourton, alias Mayer, being in the City
" of Mexico in the Republic of Mexico, did, on or
" about the first day of December, 1886, at the
" City of Mexico, and in the Republic of Mexico
" aforesaid, and within the jurisdiction thereof,
" with intent to defraud said Henry E. Abbey
" and divers persons then and there residing in the
" City of Mexico in the Republic of Mexico, and
" the public of the Republic of Mexico, fraud-
" ulently, feloniously and wickedly falsely make
" and forge and utter, knowing it to be forged,
" an instrument or writing purporting to be the
" act of another by which certain rights and pro-
" perty were purported to have been created: in
" that, at the time and place aforesaid, the said
" George Benson, alias Charles Bourton, alias
" Mayer did forge the name and signature of the
" said Henry E. Abbey to a certain ticket of ad-
" mission to one of said operas or concerts about
" to be given as aforesaid in the said Teatro Na-
" cional, wherein and whereby the said Henry E.
" Abbey purported in consideration of a certain
" sum of money to admit the holder of said ticket

" to said opera or concert; by which false making " the said Henry E. Abbey was purported to be " bound and affected in his property, and by " which false making an obligation on the part of " said Henry E. Abbey to admit the holder of said " ticket to said opera or concert was purported to " be created. And that thereupon the said " George Benson, alias Charles Bourton, alias " Mayer sold said ticket to a certain person in the " City of Mexico, who thereupon paid to said " George Benson, alias Charles Bourton, alias " Mayer the consideration demanded by him for " the same. That by said false making and forging as aforesaid, divers persons then and there " residing in the City of Mexico and the said " Henry E. Abbey were prejudiced in their rights " and property."

If the object of a complaint, as has been decided by Judge Shipman in *In re Henrich*, 5 Blatch., 414, is to enable the court to see that one or more of the particular crimes enumerated in the treaty is alleged to have been committed, it is difficult to understand how this could have been more fully accompublished than has here been done.

The objection raised by the defendant's counsel at the hearing that, a copy of the forged instrument should have been inserted, or the cause of its absence explained, is not sustained by any authorities which we have been able to find. If the complaint correctly sets forth the substance of the forged instrument, certainly the instrument itself could throw no additional light upon the nature of the crime charged: while on the other hand, if the allegations of the complaint as to the character and nature of the instrument are so indefinite as to require the production of the instrument itself in order to determine the crime, no explanation as to the cause of its absence could possibly cure the defect.

The complaint should indeed charge the crime with such perspicuity and recital of fact as will give to it a legal character and enable the magistrate to see that a *prima facie* case of the crime alleged is presented, but beyond this it is not necessary to go, and as Judge Shipman said in the case which has been cited, "the com-
" plaint need not be drawn with the formal pre-
" cision and nicety of an indictment for final trial,
" but should set forth the substantial and material
" features of the offence."

In re Henrich, 5 *Blatch.*, 414.
Spear on Extradition, 250.
I. Bishop's Cr. Pro., 231.
The People vs. Hicks. 15 *Barb.*, 158.
Payne vs. Barnes, 5 *Barb.*, 465.

II.

Section 5 of the Act of August 3rd, 1882, (22 U.

S. Stat. at Large, 215) provides as follows:

" Sec. 5. That in all cases where any depositions, warrants, or other papers, or copies thereof shall be offered in evidence upon the hearing of any extradition case under Title sixty-six of the Revised Statues of the United States, such depositions, warrants, and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing, if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States, resident in such foreign country, shall be proof that any deposition, warrant, or other paper or copies thereof so offered, are authenticated in the manner required by this Act."

Any depositions, therefore, or any warrants or other papers or copies thereof that may be offered upon the hearing are to be received and admitted as evidence relative to this purpose, if they are so authenticated as to entitle them to be received for a similar purpose by the tribunals of the foreign country from which the accused party has escaped; and on this question of authentication the certificate provided for is conclusive proof. That it is not, however, the *only* proof was decided in *In re Fowler*, 18 Blatch., 437. Judge Blatchford delivering the opinion in that case said: "Authentication in "regard to original papers may be made by oral "proof given here. A witness may swear from "his knowledge and experience that they would "be received in the tribunals of the foreign "country as evidence of the criminality of the "person in respect to the offence charged against "him, if the inquiry were being had in such "foreign tribunals."

Of a similar tenor are the cases of

In re McPhun, 30 *Fed. Rep.*, 57.
In re Wadge, 15 *Fed. Rep.*, 865; 16 *Fed. Rep.* 333; *and* 21 *Blatch.*, 300.

The certificates attached to the documents which appear in evidence in this case were decided by the Commissioner to be insufficient and not in the form required by the statue.

Relying upon the opinion of Judge Blatchford in the case above cited, the prosecution offered to supply the defect by other evidence; this was allowed and, being considered sufficient by the Commissioner, the documents themselves were admitted.

For these reasons the questions arising under this head refer solely to the admissibility of this supplementary evidence: this being of two kinds, written and oral, we shall proceed to a separate consideration of each.

I. For the purpose of proving the law of Mexico in relation to the authentication of copies of original documents, and the admissibility of these as evidence of the crime of forgery in the tribunals of Mexico, the prosecution offered in evidence copies of the Penal Code of Mexico and of the Code of Criminal Procedure. These copies were furnished by the Consul General of Mexico at New York, were taken from his office, and purport to be issued by the authority of the government of Mexico.

The prosecution, therefore, offered the same in evidence under Sec. 942 of the Code of Civil Procedure of the State of New York which reads as follows:

> " A printed copy of a statute, or other written " law, of another statute, or of a territory, or of " a foreign country, or a printed copy of a proc- " lamation, edict, decree, or ordinance, by the ex- " ecutive power thereof, contained in a book or " publication, purporting or proved to have been " published by the authority thereof, or proved " to be commonly admitted, as evidence of the " existing law, in the judicial tribunals thereof, is " presumptive evidence of the statute, law, pro- " clamation, edict, decree, or ordinance. The un- " written or common law of another state, or of a " territory, or of a foreign country, may be prov- " ed, as a fact, by oral evidence. The books of " reports of cases, adjudged in the courts thereof, " must also be admitted, as presumptive evidence " of the unwritten or common law thereof."

The special articles of the Mexican Codes relied upon were the following:

Art. 239 of the Code of Criminal Procedure:

"Certified copies of such documents as may be "beyond the territorial jurisdiction of the judge "or court before whom the case is pending, shall "be furnished upon application to the judge of "the place where such documents are recorded."

Art. 397 of the Code of Criminal Procedure:

"Public instruments are sufficient proof *in* "*themselves* saving always the right of the "parties to prove them false, and also to demand "their comparison with the originals existing in "the archives."

Art. 712 of Penal Code:

"Authentic public instruments include all written "ten instruments which, having the legal requisites "sites rendering them serviceable as proofs, are issued "sued by a notary public, or by any other person "legally authorized so to do in the exercise of his "public functions, such as administrative acts "proceedings, decrees, etc."

By the article last cited any written instrument, which is issued by any person legally authorized so to do in the exercise of his public functions, is declared to be an authentic public instrument provided it has the other legal requisites rendering it serviceable as proof. Any written instrument, therefore, issued by such official must be presumed to be "an authentic public instrument"; that is to say, it must be presumed to be a public instrument which is duly and legally authenticated. That a judge of a Criminal Court has the power to issue such documents, and that being issued they are, *as copies of originals*, admissible in evidence in other tribunals of Mexico clearly appears by referring to Article 239 of the Code of Criminal Procedure, which directs *any* judge to furnish certified copies of such documents as may be under his charge *for use* before the judge or court before whom a case may be pending in another jurisdiction.

It appears further by the provisions of Article 397 of the Code of Criminal Procedure, for the comparison of the instruments therein referred to with their originals on file, that said instruments are themselves copies and not originals. These copies are declared to be admissible in evidence solely by virtue of their being public instruments and irrespective of the nature of their contents. This view of the law is supported by the testimony of the experts examined on the subject.

Such being the case it becomes unnecessary to examine further into the nature of the documents marked Exhibits A, B, C, and F in this case. They are all *public instruments* under the definition of Art. 712 of the Penal Code, and being for that reason admissible as evidence in the Mexican tribunals, they were, under the provisions of the Act of 1882, properly admitted as evidence in this case.

II. While this evidence would seem to be conclusive and to place beyond dispute the admission of the Exhibits referred to, it is nevertheless further strengthened by the oral testimony of two expert witnesses examined before the Commissioner.

Exceptions were taken by the defence to the competency of both of these witnesses, and before, therefore, proceeding to analyze their testimony we shall briefly refer to the question of their qualification so far as that is reviewable by this Court.

> " When a witness is offered as an expert three " questions necessarily arise: 1. Is the subject " concerning which he is to testify one upon " which the opinion of an expert can be received? " 2. What are the qualifications necessary to en- " title a witness to testify as an expert? 3. Has " the witness those qualifications? (*Jones vs* " *Tucker* 41 *N. H.*, 547.")

The following statements may be made in answer to the first question:

1. The subject under investigation is the law of a foreign country.
2. That law exists both as written or statute law, *and* as unwritten or custom law.

This being the case it is a subject concerning which expert testimony may be admitted. It may be admitted irrespective of, and without the production of the written law, for the reasons: 1st.; that the question is not, what is the language of the written law; but, what is the law of Mexico altogether as shown by its exposition, interpretation and adjudication; and 2nd.; that the law existing, as it does, *both* as written and unwritten law, the latter can be proved only by the testimony of experts.

The second question is answered by a simple reference to the universally accepted rules regulating this subject and defining the qualifications of experts. An expert in any science, art or trade "is one who, by practice or *observation* has become experienced therein." "In order to prove "the law of a foreign country, it is necessary that "the witness produced to testify in respect to it, "should be more than ordinarly capable of speaking upon the subject. It does not, however, appear to be essential that the witnesses in all "cases be lawyers, *and it has even been held to "be unnecessary that they should have held "an official appointment, in which it has been "necessary for them, in the discharge of their "official duties, to make themselves acquainted "with the law.*" (*Rogers on Ex. Test., Sec. I.,* "96.")

In Texas the practice has long prevailed of receiving the evidence of intelligent Mexicans, not lawyers, as to the laws of Spain and Mexico in litigations pertaining to lands, and such evidence is pronounced by the courts of that State to have been "vaulable "in giving information as to the consuruction given "to the laws of Spain and Mexico by the officers "who executed them." (*State vs. Cuellar*, 47 *Texas*, 304.)

How far these doctrines have been applied to extradition cases is shown by the decision of Judge Blatchford in *In re Fowler*, 18 *Blatch.*, 414 where a detective who had been attached to the police force of Bradford, England, was allowed to testify as to the law of that country. In view of these decisions it would seem useless to question the qualifications of the witnesses presented; one of whom, the Hon. John W. Foster, a lawyer by profession, respesented, the United States for many years in the Republic of Mexico, as Minister to that country; and the other, the Hon. Ignacio Alas, was at one time a Judge of the Supreme Court of Mexico, and has been for thirty-two years a member of the Mexican bar.

However, we respectfully submit that this third question, as to whether the witness has the qualifictions required, is a question of fact, and therefore not reviewable by this Court.

Jones v. Tucker, 41 *N. H.*, 547.
Dole v. Johnson, 50 *N. H.*, 452, 458.

In re Henrich, 5 *Blatch.*, 417.
In re Kaine, 10 *N. Y.*, *Leg. obs.*, 257.
In re Heilbrown, 12 *N. Y.*, *Leg. obs.*, 65.
Ex parte Van Aernam, 3 *Blatch.*, 160.
Wharton Cr. Pl. & Pr., *Sec.* 57.

The competency of the witnesses being thus established, the only remaining question is as to their testimony.

Ex-Minister Foster was permitted by the Commissioner to testify as to the state of the law up to 1880 at which date he ceased to be Minister. After a careful examination of Exhibits A, B, and C, he also declared them to be properly and legally authenticated so to entitle them to be received by the tribunals of Mexico as evidence of the crime of forgery. It being an established principal of evidence that a law once proved to have existed must be presumed to exist until proved by as good evidence to have been repealed (*Rayham vs. Canto*, 20 *Mass.*, 293, *Hynes vs. McDermott*, 82 *N. Y.*, 56) the testimony of Mr Foster would be of itself sufficient to sustain the decision of the Commissioner to admit the exhibits referred to in evidence, The testimony of Ex-Judge Alas as to the Exhibits A, B, C, and F, is to the same effect as that of Mr. Foster, with the exception that it relates to the state of the law at the present time.

III.

The appellant claims that variance exists between the allegations of the complaint and the proofs presented at the hearing. That the doctrine of variance has reference solely to the *trial* of the accused and that it does not apply to proceedings before a committing magistrate is a principle of elementary law which cannot be seriously controverted. The function of a committing magistrate is not to *try* the defendant, but merely to ascertain whether there is reasonable ground to believe that a crime has been committed, and whether the defendant is implicated in it.

If upon the *trial* there is a substantial departure in the proof from the allegations of the indictment, the prisoner must be acquitted, because the prosecution having informed him of one charge cannot try him upon a different one. But this technical rule relates solely to indictments. It does not apply to complaints and hearings before magistrates, much less to extradition proceedings which are not to be conducted with that strict adherence to technical rules which is required upon a trial, but in a liberal spirit, consistent with the Solemn Treaty obligations existing between nations.

> " The complaint need not be drawn with the for-
> " mal precision nicety of an indictment for final
> " trial, but should set forth the substancial and
> " material features of the offence."

In re Henrich, 5 *Blatch.*, 414.

Spear on Extradition, 250.
1 *Bishop's Cr. Pro.*, 231.
The Poeple vs. Hicks 15 *Barb.*, 158.
Payne vs. Barnes, 5 *Barb.*, 465.

In a case recently decided in the U. S. Circuit Court in Minnesota the principles governing extradition proceedings are admirably set forth by Mr. Justice Brewer in these words:

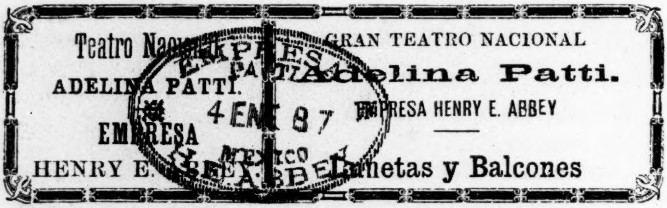
" Finally, I might observe, with reference to " these extradition proceedings, that the sub- " stance, and not the form, should be the main " object of inquiry, and that they should not be " conducted in any technical spirit with a view to " prevent extradition. While the courts should " review the proceedings to see that no extradi- " tion is consumated upon a mere pretext, or to " subserve private malice, yet, if it appears that " a crime has been committed, and probable that " the accused has fled to this country for refuge, " then a spirit of fairness, expecting that the for- " eign country will treat extradition proceedings " from this country in the same spirit, requires " that we act reasonably and justly, having refer- " ence more to the substance than to the form of " the proceedings. Between governments, as be- " tween individuals, the golden rule is both wise " and sound."

In re Herres, 33, *Fed. Rep.*, 165.

But it is not necessary in the present case to invoke the aid of these elementary principles of law. A careful examination of the evidence will clearly establish perfect harmony between the allegations of the complaint and the proof presented at the hearing.

By the complaint the prisoner is charged with having forged the name and signature of Henry E. Abbey.

In support of this charge the prosecution offered in evidence a number of tickets of which the following is a fac-simile :



Teatro Nacional

ADELINA PATTI.

EMPRESA

HENRY E. ABBEY

GRAN TEATRO NACIONAL

Adelina Patti.

EMPRESA HENRY E. ABBEY

Lunetas y Balcones

EMPRESA

PATTI

4 ENE 87

MEXICO

H. E. ABBEY

The ticket itself contained the following Spanish words: "*Gran Teatro Nacional*," "*Empresa*," "*Lunetas y Balcones*." These have been translated to mean respectively "*Great National Theatre*," "*Company*" or "*Management*" and "*Parquet and Balcony*."

The stamp contains the word "*Empresa*" at the top, the word "*Patti*" immediately below, the date at the centre, and "*Mexico*" followed by "*H. E. Abbey*" at the bottom. The appellant claims that the word "*Empresa*," being used in combination with the name "Henry E. Abbey" constitutes a person so totally different and distinct from Henry E. Abbey that a charge of the forgery of the last mentioned name cannot be supported by proving the forgery of the first.

The question therefore comes to be, whose name did he forge?

The solution of this question is found in the answer to three others.

1st. Whose name did he intend to forge?

See *Wharton's Cr. Ev.* § 149.

2nd. Upon the face of the tickets, what was the name upon which the Mexican public had a right to rely, and upon whose credit they made the purchase?

3rd. Who would be liable upon the tickets, were they genuine?

If to any one of these questions the name of Henry E. Abbey can be given as answer, the doctrine of variance could be of little use to the appellant, even if he were able to prove its applicability to the present case.

The first question is answered by the declarations of the appellant who constantly represented himself to be Abbey's personal agent, and who spoke of the concerts and operas for which he issued tickets as being Abbey's personal business. Having made these representations, it is in the highest degree improbable that he should intend to use a different name upon the tickets.

As regards the second question it is best answered by an inspection of the tickets themselves. Such an examination reveals the following facts which also throw light upon the question which has just been discussed.

The word "*Empresa*" and the name of Abbey occurs three times; twice upon the body of the ticket, and once upon the stamp. Upon the left the word "*Empresa*" stands between the names "*Adelina Patti*" and "*Henry E. Abbey*," and presumably may belong to either of them: on the right the word appears in smaller type in connection with Abbey's name: on the stamp the two are separated as far as possible, and the word "*Empresa*" immediately precedes the name "*Patti*." So far, therefore, as appears upon the face of the ticket, the word "*Empresa*" is used once with each name, and once between them. Which of these cases are we to select as the one most likely to strike the eye of the purchaser, and as the one to which he would naturally give most weight and credit?

We unhesitatingly affirm that the stamp is by far the most important part of the ticket, and that the impressions first given by this are strengthened and confirmed by the prominent place which Mr. Abbey's name occupies on the left of the ticket. A purchaser having observed these names, would be very unlikely to notice the small type on the right, and if he did so, would attach little weight to it.

This view of the case is greatly strengthened when we consider the nature of the stamp. It was evidently placed there as a mark of apparent genuiness: it was stamped with different colored ink for the purpose of showing that it was a subsequent impression, and that it was therefore intended as a guarantee and endorsement of the genuiness and validity of the ticket itself.

In the third place, who would have been liable upon the tickets had they been genuine?

In this connection it was important to note:

1st., that when the appellant arrived in Mexico he represented himself to be the agent of "Henry E. Abbey," and he sold the tickets in question as such agent.

2nd., that if mention was ever made by him of any Company or management bearing Mr. Abbey's name the term was used by him interchangeably with Henry E. Abbey, and was meant to mean the same person.

3rd., that there is no proof or pretence that any corporation, co-partnership or association exists or existed bearing the name of Henry E. Abbey.

4th., that on the contrary the evidence distinctly shows that Henry E. Abbey individually was the proprietor and manager of an operatic *troup* or *company* organized to give operas and concerts, wherein Madame Patti was the prima donna.

5th , that the word "*Empresa*" which the appelant seeks to couple with Mr. Abbey's name has been variously translated "company" and "management," and is susceptible of many other meanings, such as "*enterprise*," "*undertaking*," etc.; and that in the present case if used in connection with Mr. Abbey's name it means simply an operatic troup or company under the direction, management and proprietorship of Henry E. Abbey.

In view of these facts it seems useless to examine the question further.

Had the tickets been genuine, Mr. Abbey would undoubtedly have been liable upon them, and in case admission to the theatre had been denied the purchasers on their presentation, he would not have been allowed to escape personal responsibility by alleging that the word "*Empresa*" was on the ticket in connection with his name, and that therefore the purchasers must look to some imaginary person for redress.

IV.

Was the fabricated ticket the subject of forgery at common law?

This question, we submit, must be answered in the affirmative.

What is forgery at common law?

I.—Lord Coke: To forge, is metaphorically taken from the smith who beateth upon his anvil and forgeth what fashion or shape he wills. The offense is called *crimen falsi* and the offender *falsarius*, and the latin word to forge is *falsare* or *fabricare*, and this is properly taken when the act is done in the name of another person. 3 Inst. 169.

Mr. Justice Blackstone: "The fraudulent making or alteration of a writing to the prejudice of " another man's right." 4 Blk. Com., 24.

Mr. East: "The false making of any written " instrument for the purpose of fraud or deceit." (2 East. Pl., 852.)

Mr. Chitty: "The false making or alteration of " such writings as either at common law or by " statutes are its objects." 3 Chitty Cr. L., 1022.

And again: "Every kind of writing seems on " the doctrine of these cases (cases cited) to be a

" thing in respect of which forgery at common " law may be committed." Chitty Cr. L., § 1023.

Mr. Justice Buller: " The making of a false in- " strument with intent to deceive." 2 East Pl., 853.

Mr. Baron Eyre: A false signature with intent to deceive. 2 East Pleas, 883.

And again: " The false making of an instru- " ment which purports on its face to be good and " valid for the purpose for which it was created, " with a design to defraud any person or persons." Rex *vs.* Jones, 1 Leach, 366.

Mr. Justice Grosse: " The false making of a " note or other instrument with intent to de- " fraud." Rex *vs.* Parker, 2 Leach, 775.

Russell on Crimes: Forgery at common law has been defined as the fraudulent making or alteration of a writing to the prejudice of another man's right, or more recently as the false making—a making *malo animo*, " of any written instrument for the purpose of " fraud and deceit. The word making in this " last definition being considered as including " every alteration of or addition to a true instru- " ment."

Russell on Crimes, Vol. II., 709.

Bishop:

" Forgery at common law is the false making
" or materially altering, with intent to defraud, of
" any writing which if genuine might apparently
" be of legal efficacy as the foundation of a legal
" liability."

Bishop Cr. Law, Vol. II., § 523.

Wharton says it consists " in making a false
" suable document with intent to defraud."

Wharton Cr. Law, Vol. I., § 653.

The same author says:

" All written or other instruments which may
" be the foundation of a suit against another may
" be the subject of forgery."

Wharton Cr. Law, §§ 680, 682.

" Forgery at common law seems only to have
" been a species of fraud, and is therefore often
" intermingled with false personating and other
" means of defrauding * * * *
" it may be committed in respect to any writing
" whatever, by which another may be defrauded.
" It is not essential to the offense of forgery in any
" case that any one should have been injured. It
" is sufficient if the instrument forged, supposing
" it to be genuine, might have been prejudicial."

Barbour Cr. Law, §§ 114, 115, 2 *Ed.*

It is enough if the instrument is calculated to deceive. It is not necessary to prove damage or injury to have accrued if the instrument is calculated to defraud. Nor need there be any person capable of being immediately defrauded; it is enough if the injury may possibly be inflicted in the future. Nor need the person whose writing the forged paper purports to be, be in existence. Nor need the paper itself be a complete instrument in all its parts.

Wharton Cr. Law, §§ 745, 694.

The ticket in question clearly falls within the foregoing definitions:

II.—The defendant, however, claims that the ticket in question cannot be the subject of forgery because it is a *nudum pactum* invalid on its face; and he invokes the rule so well stated in Bishop on Criminal Law, that "to constitute forgery it is not "alone sufficient that there be a writing and the "writing be false, it must also be such as if true "would be of some legal efficacy, real or apparent, "since otherwise it has no legal tendency to de-"fraud."

Bishop Cr. Law, Vol. 2, § 533.

The instrument is incomplete, argues the appellee. It expresses neither promise nor consideration. It has none of the elements of a contract.

It is void, and therefore not the subject of a forgery.

To this we reply that, while the general doctrine that the forged instrument to be the subject of forgery must appear on its face to be good and valid for the purpose for which it was created, yet it is also the rule that *when a writing, like a theater ticket, is so incomplete in form as to leave it uncertain in law whether it is valid, it may be shown to be valid by averment of extrinsic facts; and that where such extrinsic facts are set out in the complaint and proved on the hearing the defendant must be held, and if proved on the trial must be convicted.*

We proceed, therefore, to show: first, that this is the rule applicable to the forgery of such incomplete instruments as are not on their face the subject of forgery; and second, that in this proceeding the complainant did aver and did prove upon the hearing such extrinsic circumstances as brought the instrument within the exception to the general rule respecting invalid instruments above stated.

1. First as to the rule.

" We should carry in our minds," says Bishop " the distinction between writings, the validity or " invalidity of which appears on their face and " those which are on their face uncertain. As to " the latter we should remember that extrinsic

" evidence may be introduced showing them to be " either valid or invalid."

Bishop Cr. Law, *Vol. II.*, § 537.

Wharton says: " Where the instrument is in- " complete on its face so that as it stands, it can- " not be the basis of any legal liability, then to " make it the technical subject of forgery, the in- " dictment must aver such facts as will invest the " instrument with legal force."

Wharton Cr. Law, *Vol. I.*, § 740.

" A writing void on its face, as for instance an " altered will of land or a *nudum pactum*, is a " familiar instance of paper in respect to which " forgery cannot be predicated without the aver- " ment of some extrinsic fact, showing how it " may become pernicious."

Archibald Cr. Practice, 574, *note.*
Rex vs. *Martin*, 1 *Moody*, 483.
Rex vs. *Hoodman*, 8 *Car. & P.*, 180.
Rex vs. *Vaughan*, 8 *Car. & P.*, 276.
Rex vs. *Boardman*, 2 *Moody & R. Law*, 181.

In the People *vs.* Shall, 9 Cow., 784, Cowing, *J.*, while declaring the instrument in that case not to be the subject of forgery, recognized and expressed the rule, upon which we rely, in these words:

" To me it," the instrument, "appears to be

" directly within the cases cited, holding that an
" instrument purporting to be void on its face,
" *and not shown to be operative by averment, if*
genuine is not the subject of forgery.

The same principle is recognized in People *vs.* Harrison, 8 Barb., 560.

In Comm. *vs.* Ray, 3 Gray, 441, the forged instrument was a railroad ticket in these words:

" NEW YORK CENTRAL RAILROAD,
" Albany and Buffalo.

" Good this day only unless indorsed by the conductor.

" D. L. TREMYRE."

This, of course, did not state in terms any contract in detail, but only abbreviations and words from which a contract might be properly inferred and be legally stated. The contract obligation purported to have been created by the ticket was averred in the indictment, when the ticket was described as a ticket or pass issued by the New York Central Railroad Company, whereby said corporation promised and assured to the owner and holder thereof a passage in their cars over their railroad extending from Albany to Buffalo.

The Court held that with such averments and proof the ticket was the subject of forgery, saying:

" It is said that the instrument does not import
" a contract or promise of any kind. We think

" otherwise; and that although it is wanting in " details of language fully stating the nature and " extent of such contract, it has written language " sufficiently indicative of a promise or obligation " to render it an instrument of value, by the false " and fraudulent making of which the rights of " others may be prejudiced. This false making " would, if genuine, have created a liability on the " part of the New York Central Railroad Company " to carry the holder thereof from Albany to Buffalo, and would therefore have been a contract " of value in the hands of a third person."

Again, in Commonwealth *vs.* Costello, 120 Mass., 367, the Court said: " The false making of an instrument merely frivolous, or one which upon " its face is clearly void, is not forgery, because " from its character it could not have operated to " defraud, or have been intended for that purpose; " but if the instrument is made with intent to defraud, although before it can have effect other " steps must be taken or other proceedings had " upon the basis of it, then the false making is a " forgery notwithstanding such steps may never " have been taken or proceedings had. So if with " this intent it is to be or has been connected with " facts the existence of which are essential to its " validity, which are merely simulated, so that it " would not be operative even if truly signed, be-

" cause such facts had no actual existence, it is
" still a forgery."

A distinction must be made between incomplete instruments such as the theater ticket in question, which may be shown to be valid by averment and proof, and that class of instruments which being void on the face cannot be shown to be valid by any averment or any proof.

To the latter class belong such instruments as depend for their validity upon a strict compliance with the provisions of some statute. In such a case, unless the forged instrument is made to possess all the statutory requirements, it is not the subject of forgery, because if genuine it would be absolutely void.

The books are crowded with illustrations of instruments of this class upon which it has been sought to predicate a charge of forgery.

See *Rex* vs. *Pateman*, *R. & R. C. C.* 453, where the forged instrument was unsigned, and therefore possessed of no validity even if genuine.

King vs. *Moffat*, 1 *Leach*, *C. P.* 431, where the forged bill of exchange failed to comply with the statutory requirements relating to bills of exchange, so that a genuine bill in the same form would have been valueless.

Queen vs. *Closs*, 1 *D. & B. C. C.*, 460, where the Court held that a picture was not a writing or document.

For other illustrations of the same principle see—

King vs. *Jones*, 1 *Leach C. P. L.*
In re Mitchell, *Porter's C. C.*, 119.
People vs. *Shall*, 9 *Cow.*, 784.
People vs. *Fitch*, 1 *Wend.*, 198.
People vs. *Wilson*, 6 *Johns.*, 320.
People vs. *Harrison*, 8 *Barb.*, 560.
People vs. *Cunningham*, 4 *Hun*, 455.
People vs. *Martin*, 36 *Hun*, 462.
People vs. *Savage*, 5 *N. Y., Cr. L. Rep.*, 543.

But as we have shown, where the writing though incomplete and uncertain can be shown to be valid, possessing legal efficacy, and therefore capable of being used for the purpose of defrauding, it is the subject of forgery provided averment and proof of such extrinsic facts are made.

The learned Doctor Wharton, in his admirable treatise on Criminal Law (9 Ed., § 685), says:

" A ticket, when it is an order from the Treas-
" urer or ticket agent of an institution to the door-
" keeper, conductor or other agent requiring him
" to admit the holder to certain rights, may be the
" subject of a forgery. Such a ticket resolved into
" its elements is an obligation, which, if genuine,
" subjects the obligor to legal process; and hence,

"the forgery of a ticket which possesses these
"characteristics is forgery at common law. This
"applies to all tickets upon which the obligor
"may be held responsible, *e. g.*, railway tickets,
"tickets to concerts, theaters," &c.

Again:

"The ticket on its face rarely, if ever, contains
"a legal obligation; this is immaterial if there is
"really a consideration. In England it has even
"been held that free passes may be forged at
"common law."

Wharton's Criminal Law, § 686.

On the the same principle it has been held that a railroad pass may be the subject of forgery at common law.

Regina vs. *Boult*, 2 *Car. & K.*, 604.
See also, *Regina* vs. *Moore*, 1 *D & B.*, 550.

2. Such being the rule we proceed to show that the complaint did aver, and that the complainant did prove upon the hearing before the Commissioner, such extrinsic facts and circumstances as would have made the ticket which the defendant is charged with forging a valid obligation in the hands of the holder against Henry E. Abbey, and therefore the subject of forgery within the rule above stated.

After reciting that Henry E. Abbey was engaged in the business of manager of theatrical and operatic and concert troops and companies, and that in the course of such business he had engaged the Teatro Nacional in the City or Mexico, for the period of one month, for the purpose of giving Patti concerts; had deposited the sum of $500 on account of the rent for said theater for the time stated, and had announced the giving of said concerts, the complaint proceeds to state that the prisoner did forge "the name and signature of the " said Henry E. Abbey to a certain ticket of admis" sion to one of said operas or concerts about to be " given as aforesaid in the said Teatro Nacional, " wherein and whereby the said Henry E. Abbey " purported, in consideration of a certain sum of " money, to admit the holder of said ticket to said " opera or concert; by which false making the said " Henry E. Abbey was purported to be bound and " affected in his property, and by which false " making an obligation on the part of said Henry " E. Abbey to admit the holder of said ticket to " said opera or concert was purported to be " created. And that thereupon" the prisoner " sold said ticket to a certain person in the City of " Mexico, who thereupon paid to" the prisoner " the consideration demanded by him for the " same." Again, "That by said false making and " forging aforesaid divers persons then and there " residing in the City of Mexico, and the said

" Henry E. Abbey were prejudiced in their rights " and property."

Such allegations were surely sufficient, if proved, to make the incomplete contract expressed in the ticket a complete writing. What then was the proof?

The complainant, after proving the business of Henry E. Abbey, the engagement by him of the theater for the purpose of giving a series of Patti concerts, the deposit of the sum of $500 on account of the rent, and the announcements of the performances in the City of Mexico, precisely as set forth in the complaint, proceeded to prove that the prisoner arrived in the City of Mexico on the first day of December, 1886; represented himself to be Marcus R. Mayer, the advance agent and general manager of Henry E. Abbey; procured a printer to print the tickets with Henry E. Abbey's name upon them as charged in the complaint, together with a great number of duplicate tickets; caused some of the tickets to be sold from the box office in the theater to Moran, and others to Pritchard, who respectively paid the consideration demanded for the same.

III.—The remaining question is, would such tickets, if genuine, have been evidence in the hands of Moran and Pritchard of a valid claim on their part against Henry E. Abbey? As the holders of genuine tickets, had Moran and Pritchard any right to be admitted to the concerts for which the tickets were issued, and any redress at law in case admission, upon the presentation of the tickets, had been refused?

It is very clear that the holders of the tickets in each instance, had the tickets been genuine, would have been entitled to be admitted to the performances for which the tickets were sold; and had admission been refused, Henry E. Abbey would have been liable to the holders for a breach of contract.

In McRea *vs*. Marsh, 12 Allen, 213, the plaintiff was the holder of a theater ticket who had been refused admission to the performance for which the ticket was sold. The Court held that while the ticket was an executory contract and a license legally revocable, and that therefore the defendant was not liable in an action in tort for removing the holder of the ticket from the theater, yet that the plaintiff was entitled to recover in an action upon contract the money paid by him for the ticket, and all legal damages sustained by the breach of the contract, implied by the sale and delivery of the ticket.

To the same effect are

Drew vs. *Poor*, 93 *Pa. St.*, 234.
Wood vs. *Leadbitter*, 13 *M. & W.*, 850.
Taylor vs. *Waters*, 7 *Taunt.*, 374.
Barton vs. *Sheriff*, 1 *Allen*, 133.
Magoverning vs. *Staples*, 7 *Lans.*, 145.

IV.—That the ticket, and the name of Henry E. Abbey upon it, was printed instead of written does not affect the question, for forgery may be committed by printing as well as by writing.

Bishop says: "In reason, whether the writing "is made with a pen, with a brush, with printer's "type and ink, or with any other instrument or de- "vice, whether in characters which stand for "words or for ideas, in the English language or "in any other, is immaterial, provided the repre- "sentation to the eye conveys to any mind the "substance of what constitutes forgery. The de- "cisions may not have fully covered this ground, "but such is the principle involved in them."

Bishop Criminal Law, v. *II*, §§ 525, 527.

In Commonwealth *vs.* Ray, 3 Gray, 446, Dewy, *J.*, said:

"It is then objected that the crime of forgery "cannot be committed by counterfeiting an in- "strument wholly printed or engraved, and on "which there is no written signature personally "made by those to be bound. The question is "whether the writing, the counterfeiting of which "is forgery, may not be wholly made by means of "printing or engraving, or must be written by "the pen by the party who executes the contract "In the opinion of the Court, such an instru-

"ment may be the subject of forgery, when the "entire contract, including the signature of the "party, has been printed or engraved. The cases "of forgery, generally are cases of forged hand-"writing.

"The course of business and the necessities of "general facilities for despatch have introduced, "to some extent, the practice of having contracts "and other instruments wholly printed or en-"graved, even including the name of the party to "be bound."

In the People *vs.* Rhomer, 4 Parker's C. R., 166, Sutherland, *J.*, said:

"As the wants of civilization and commercial "necessity established paper credit, and from time "to time called into use new instruments in writ-"ing, statutes were from time to time passed pun-"ishing, with severer punishment, the forging of "such instruments.

"Increased facilities and cheapness in the use of "type, has, in our day, in a great measure, substi-"tuted printing for writing, and now printed in-"struments partly printed and partly written, "are quite as common as instruments wholly "written.

"The fraudulent interest with which an instru-"ment is forged, or with which a forged instru-"ment is possessed, being the very gist and essence "of the crime without which the counterfeiting "might be nothing more than innocent amusement, it is very clear, without reference to statutory definitions, that the making of a printed "or engraved instrument calculated to deceive and "defraud, with intent to deceive and defraud, "might be just as much forgery as the making of "a written instrument with the same intent. The "crime depends on intent, and the intent is to be "inferred from and depends on facts and circumstances.

"If the prisoner Rhomer had caused to be printed "or written an ordinary negotiable promissory "note, and had with ordinary printing type impressed the name of 'John Smith' upon it as a "signature, or in the place of a signature, it would "have been difficult, if not absurd, to believe that "he had forged the note, for individuals do not "print their names to their notes but write them; "and therefore it would have been difficult to believe, that he could have defrauded anyone with "the note by making them believe that it was the "note of any one of the 'John Smiths' in the City "of New York.

"I do not see why an engraved or printed instrument, or an engraved or printed name, affixed "to an instrument by a person, is not his act and "may not purport to be the act of another."

People vs. Rhomer, 4 *Parker*, 166.

See also, *Wharton's Criminal Law*, § 675,
Comm. vs Ray, 3 *Gray*, 461.
Rex vs. Smith, *Dearsly & Bell*, 567.
Rex vs. Rinaldi, 9 *Cox*, *C. C.*, 391.
Hanshaw vs. Foster, 9 *Pick.*, 512.
Sanders vs. Jackson, 2 *Bos. & P.*, 238.

"If a person is in the habit of printing his name, such printing the name by way of signature is tantamount to writing it."

Chitty on Cont. (10*th*, *Am. Ed.*), 72.
Schneider et al. v. Morris, 2 *M. & S.*, 286.
Wheeler vs. Lyndi, 1 *Allen.*, 402.

V.—The prisoner insists that inasmuch as the printed name of Henry E. Abbey bore no resemblance to his written signature, the ticket could not have deceived anybody, and that, therefore, it is not the subject of forgery.

The answer to this is that the doctrine of similitude only applies to cases where the genuine signature or writing which the forger counterfeits is well known to the persons whom it is intended to defraud.

If, for instance, the Mexicans had known that tickets issued by Henry E. Abbey always bore his personal signature written or lithographed, then it could not be said that a ticket bearing a printed signature was calculated to defraud them.

But there are no such facts in this case.

Theatre tickets are not signed like promissory notes or bills of exchange, nor like bonds or certificates of stock. No one looks for a signature upon them.

All that is looked for is the name of the performance and its time and place.

To such writings the doctrine of similitude cannot apply.

The sole test is, were the tickets in such a form as that they were calculated to defraud.

It is in evidence that the tickets had the form and appearance usual in tickets, issued for concerts at the National Theater in the City of Mexico.

Bishop in his work on Criminal Law says as follows:

" Among the subjects of forgery, however, are
" many writings not of a nature to be familiar to
" the public, or to the particular individual to be
" defrauded. The rule of similitude cannot pre-
" vail as to them. An illustration of this proposi-
" tion is where the forgery is of a fictitious name,
" in which case there can be no similitude, there
" being no original."

II Bishop's Cr. L., §§ 592, 593.

" The subject of similitude depends on so many
" considerations, that no general direction concern-

"ing it can meet every possible case. But this "one suggestion will aid the practitioner, namely: "that the instrument must have an adaptation to "accomplish some legal wrong, and failing in this, "the false making is not forgery. If without this "similitude, it has this adaptation to perpetrate "the fraud, the same as with it, the similitude "cannot be regarded as important."

II Bishop's Cr. L., § 595.

V.

Forgery in the treaty between the United States and Mexico must be understood to mean forgery at common law.

This proposition was contended for by the appellant himself before the Commissioner and in the Court below, yet he now comes into this Court assigning as error the fact that the Mexican Penal Code offered in evidence was published in 1879, and that therefore the law of Mexico as to forgery in 1861, when the treaty went into effect, remains unproved.

Article I. of the treaty, after enumerating the crimes for which fugitives may be surrendered, makes this express provision: "*Provided*, that this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person accused shall be found would justify his or her apprehension and commitment for trial if the crime had been there committed."

The meaning of this provision is very evident, and conclusively proves that in the present case the laws of *this* country, *not* the laws of Mexico, are to govern in determining whether or not the crime with which the appellant is charged is or is not forgery.

This provision is not peculiar to the treaty with Mexico; it is to be found in most, if not all, the extradition treaties of the United States, and the very question now raised has been adjudicated in a number of English and Canadian cases.

In the case of Trueman B. Smith, who was claimed from Canada by the United States in 1869 upon the charge of having, in the State of Iowa, committed forgery, by forging, coining, counterfeiting and making spurious silver coin of the stamp and imitation of the silver coin of the United States, this was the principal question raised.

Mr. Justice Wilson, in the course of his opinion, spoke as follows: "This is unquestionably not forgery by the law here, nor from the evidence given can I assume it to be forgery according to the law of the State of Iowa, or of the United States of America, if that would make any difference. The statute declares that the offence charged must be such as would, according to the law of this province, justify the apprehension and committal for trial of the person accused, if the crime had been committed here; so that, if not an offence of the character charged according to our law, the person is not to be apprehended, committed, or delivered over to the foreign State."

In re Smith, 4 *Can. L. J.*, 118; *and* 3 *Amer. Law Rev.*. 178.

Victor Wideman, whose extradition was asked from England by France in 1866, on a charge of fraudulent bankruptcy, was arrested and committed, and upon being brought before the Court of Queen's Bench, and the point being made that no proof had been given before the magistrate that the act charged constituted fraudulent bankruptcy under the French law, the Court (Cockburn, *C. J.*, Miller and Blackburn, *JJ.*,) held that, as there could be no doubt of the nature of the acts charged, the strict proof that they constituted the crime of fraudulent bankruptcy by the French law was unnecessary.

Clarke's Treatise on Extradition, 138, 139.

This case, it will be remembered, was so decided even in the absence of any such express provision on the subject as exists in the treaty between the United States and Mexico.

These decisions are confirmed and upheld by many others.

In the case of Windsor, 6 Best & S. 527, Cockburn, *C. J.*, said: "We must take the term forgery in the extradition act (founded on the Washburton treaty), to mean that which by universal acceptation it is understood to mean, namely, the making or altering a writing so as to make the writing or alteration purport to be the act of another, which it was not."

See also, *Lagraves Case*, 14 *Abb. Pr. N. S.*, 333.
In re Tully, 20 *Fed. Rep.*, 812.
In re Eno, 30 *Alb. Law Jour.*, 144.

The appellee, it is true, proved upon the hearing that the acts of the prisoner in Mexico constituted the crime of forgery there. The following sections of the Mexican Penal Code were especially relied on for this purpose:

ARTICLE 701 OF THE PENAL CODE.

The forgery of the seal of a private person, or of a seal, mark, stamp, or countersign of a commercial house, or of a private banking or industrial establishment, shall be punished by major arrest, and by a fine of the second class. The same penalty shall be imposed upon him who uses said seals, marks, countersigns, or false stamps, upon him who employs the real ones on forged objects in order to make them pass as true.

ARTICLE 710 OF THE PENAL CODE.

Section 1. The forgery of a document shall only be punished when it is committed in one of the following ways: first, by the placing of a false signature, even though this be imaginary, or changing one that is true.

Section 5. When the party who issues the document attributes to himself, or attributes to the person in whose name he makes it, a name, or a character, or a quality, or a circumstance, which they have not, and which may be necessary for the validity of the act.

ARTICLE 711 OF THE PENAL CODE.

In order that the forgery of documents shall be punishable as such, it is necessary that the following circumstances shall concur: first, that it shall be committed fraudulently; second, that the forger shall propose to obtain some advantage for himself, or for another, or to cause damage to some one, or to the public; third, that there shall result, or may result, damage to society, or to any individual, be it in his own property, or in his person, or in his honor, or in his reputation; fourth, that the forger shall commit the forgery without the consent of the person to whom results or may result damage, or without the consent of the person in whose name the document is made.

The appellee, however, conceded that, that proof would not be sufficient unless the same acts statutes of the United States or official authority of the Department of Government is competent evidence to prove the age of persons therein enumerated, and if they find that a census of the Indians and persons of mixed blood by the Department for its guidance was made and furnished officially by the Department to Mr. Stark for his guidance in making allotments, then such list is competent evidence to prove the age of the son of Lag-gar-ash, George Washington.

50 Which request the court refused to give to the jury, and to such refusal the plaintiff then and there excepted.

The plaintiff further requested the court to give the jury the following instructions as set out at lines 25 to 32, inclusive, marked plaintiff's request below:

The Charge of the Court.

In the Case of HEGLER *vs.* FAULKNER *et al.;* delivered January 9th, 1885, in Lincoln, Neb.:

GENTLEMEN OF THE JURY: The plaintiff has sued the defendants to recover the possession of three hundred and twenty acres of land—that is, one-half of section 8, township 2, range 17, in Richardson county, Nebraska.

Now, if the plaintiff is entitled to recover at all I think I ought to say to you now that under no circumstances can he recover in this action, as the testimony now stands, all of the land that was claimed, for the reason that the testimony conclusively shows that one of the grantors had already conveyed away one hundred acres of the land before the plaintiff in this suit became seized of the land, so under no circumstances would he be entitled to recover it all, though he may be entitled to recover a part in your opinion.

The question of identity and the age of the individual described in the patent is the principal one for consideration. I have been asked by the defendants to state to you the circumstances under which this allotment was made to the half-breed Indians in question, and I think I can explain that so that you may get some little better understanding than you have at the present time from what has been said by counsel on the other side. In 1830 there was a treaty made between several tribes of Indians known as the Prairie du Chien treaty. That was ratified and became a part of the
51 laws of the land in that treaty. The several Indian tribes represented desired to make some provision for the mixed bloods belonging to the several tribes, and they had a provision inserted by which the mixed-blood Indians belonging to these tribes were provided for, and a section of land between the Nemahas running from the Little to the Great Nemaha ten miles wide on each side was set apart for the half-breeds of these several tribes who joined in that treaty. Afterwards an act of Congress was passed that required it to be divided up among the half-breed Indians of the several tribes belonging thereto. The tribes named are the Iowas, Yankton, Sontees, the Omahas, and the Saxes, the Foxes, and the Missouris. Those are the Indians that are named there whose half-breeds and

mixed-bloods are entitled to participate in the allotment on that particular reservation. An act of Congress was afterwards passed carrying into effect the provisions of this treaty and required the census to be taken under the supervision of the Indian Department of the Government, and when the names of the half-breeds were ascertained it was settled by the Interior Department as to what ones were entitled to receive the land; they were to receive not to exceed 320 acres each. When the proper time came a commissioner was appointed to take a census—that was Mr. Sharp—and he made his report, and his report was imperfect in several instances; some were left off and others were put on the census roll. A number of efforts were afterwards made and the names of some were placed on that list, and this one among a number that was left off. Testimony was taken and the names placed on the list; he was found entitled to land, and when the allotment was finally made by the agent Stark, who was appointed for that purpose, then this particular Indian received his allotment the same as the others. That is the manner in which the whole business was transacted and the way in which this
52 party became entitled to participate in the allotment, he being of the Iowa tribe of Indians, and that tribe being represented when treaty was made. George Washington, having been found to be entitled to participate in the allotment, he having some white blood in him, was placed upon that list, and in pursuance of the law and the regulation of the Department he received his land the same as the others.

The mixed-bloods of the Omahas were also entitled to participate; hence, we see the name of one individual called George Washington, who was said to be an Iowa Indian—a son of Lag-gar-ash, and another Indian among the Omahas named George Washington is placed on the list, one belonging to one tribe and another to another. Can there be any doubt as to which Indian, or which half-breed, or which mixed-blood is the one that was intended to receive this land and which did receive it?

I think that the testimony on both sides shows that George Washington, the Iowa mixed-blood, was the one that was entitled to receive it and received the three hundred and twenty acres in controversy in this suit.

Then the important question for you to determinate is as to the age of George Washington at the time of this allotment and the time of making the alleged transfer from him to Houston Nuckals, under whom this plaintiff claims.

The plaintiff has asked me to give you several instructions; I think they are in the main correct, yet I give them with one slight modification. Now, at the time this conveyance was made it is said that George Washington had no title to this land. That may possibly be true, but my judgment is the other way. If a certificate of allotment was made to him—that is, some title, it is some evidence of title at any rate, and would be enough to put him in possession and enough to justify him in
53 keeping everybody else out of possession, so that he had a right to the land when the allotment was made and conveyed

amounted also to a common law forgery in the United States.

The question is, did the acts charged in the complaint and proved upon the hearing make out a *prima facie* case of a common law forgery? Upon this question we respectfully submit that there can be no doubt.

S. Mallet-Prevost,
De Lancey Nicoll,
Counsel for Mexican Government.

APPENDIX.

Opinion of Commissioner Lyman.

The definition given by Bishop, in the latest edition of his treatise on Criminal Law, Vol. 2, is as follows: "Forgery is the fraudulent making of a "false writing which, if genuine, would be ap-"parently of some legal efficacy." And in the first volume of the same work, Section 734, he says that forgery is indictable because it must tend to defraud individuals or the public. The question in this case, in the first place, is, whether we have a fraudulent making of a false writing. There are three charges in the complaint. First, that a fraudulent letter was written by the prisoner, addressed to the owner or manager of a theatre in the City of Mexico, in substance accrediting the prisoner as the legally authorized agent of Mr. Abbey to carry on arrangements for the giving of operatic concerts, the preliminaries to which had already been taken by Mr. Abbey. I understand that that charge is substantially abandoned. I should judge so from the evidence submitted; for the reason that there is no proof as to who wrote the letter which is referred to in the charge. There is proof that a letter in substance as stated was received the day after the arrival of the prisioner in the City of Mexico, which letter appears to have miscarried, and which it was apparently the intention should have preceded his arrival, and operated as an introduction of himself. The second charge is that operatic tickets, that is, tickets for admission to operas to be given in the City of Mexico during a period which was covered by the engagement of the theatre to which the tickets referred, were issued with the name of Henry E. Abbey upon them. The third charge is that tickets for the same performances were issued with the name of Marcus R. Mayer upon them.

The only evidence that has been introduced in this case which bears upon the question further than that referred to in the matter of the letter is the evidence pertaining to the second count, namely: that fraudulent tickets with Henry E. Abbey's name upon them were issued: and with that charge solely we have to do.

These tickets, it appears, are in print. There is no manuscript writing upon them. But there is, besides the print, done in the printer's office, a stamp, in the form of a seal, containing the words "Henry E. Abbey Company"; and the proof shows that this stamp was used by the prisioner, or in his presence, which is the same thing, and impressed upon these tickets as they appear in the Exhibit C referred to in the testimony. That this is a false writing so far as the body of the contract is concerned, although in print has been adjudicated by a number of authorities. Upon that point I assume there is no longer any reason to doubt, that these printed tickets are as much a false writing within the common law definition of forgery as if the prisoner had written them with his own pen, without the intermediary of the printer.

It must appear that this writing, that is, this ticket, would, if genuine (that is, if it had been stamped by Mr. Abbey himself, or by his authority) be apparently of some legal efficacy, or tend to defraud individuals or the public.

The difficulty of the case hangs upon the application of this definition to both the contents of this writing apart from the signature and the signature itself. The difficulties attending the question of the contents of the ticket seem to me to have been disposed of, as a prima facie case, by the testimony given by the prosecution. Upon the face of it disregarding the testimony of the witness given at the last meeting, who, as an expert, was questioned concerning the validity of contracts not expressing any legal consideration in the City of Mexico, and viewing the contract as it would be viewed in the courts of this country, or in any other courts practicing according to the rules of the common law, the ticket itself appears to have been of no legal efficacy because apart from the extraneous circumstances such as have been proved in this case, it appears to be nothing more than a token, or a simple promise, without any consideration. But testimony has been adduced here which is ample to show that these tickets were actually sold, that money considerations passed, that bone fide holders by the thousands had them ; and it would seem, therefore, as if the question of a consideration were as effectively established as if the ticket itself expressed it. Moreover, it has also been proved that the theatre had been engaged by Mr. Abbey at the time designated by these fraudulent tickets as the time when the concerts would be given, and a deposit made for the paymənt of the rent. So that the lesee of the theatre was, under all the ordinary obligations of a contract, bound to reserve the theatre for this express purpose, had the tickets been genuine—and doubtless did so—and therefore the circumstances apparently existed, which made it incumbent upon Mr. Abbey, if these tickets had been genuine, and the signature had been authorized, either to give the performance for which the money had been taken, or refund to the public the money which he had received, or had been paid.

It has further been claimed that the prejudice of another's right, which is spoken of in Blackstone as an element in the definition to constitute common law forgery, is such prejudice as has been proved by the prosecution in this case, namely, that the conduct of the prisoner had been such that the defrauded party Mr. Abbey, had been compelled to moderate the terms upon which admission to the genuine concerts, which were subsequently given, were placed, and that he was in various ways prejudiced by reason of the conduct of this prisoner. Disregarding that consideration, however, it would seem as though this contract, if the signature to the contract is sufficiently represented in this seal upon the ticket, was such a contract as would make Mr. Abbey liable in damages to the extent at least of the amount that he had received for the tickets. I think all the authorities bearing upon the question of what constitutes legal efficacy are very plain to show that this was a contract, as distinguished from a mere token.

In 8 Cox's Criminal Cases will be found reported a case of forgery charged against a person who used the name of the proprietor of an article of baking powders, which were prepared and done up in bundles, and stamped "Borwick's Original Baking Powder" &c. The prisioner caused to be prepared spurious baking powders, and caused to be printed a number of packages with identically the same impression. He was indicted for forgery, and the Court held not forgery ; that it was a case of obtaining the money under false pretenses. It is a very good case as illustrating the difference between a trade mark and a contract. The stamp upon the paper did not purport to be a contract ; it simply represented that the packages contained the same baking powders as the original Borwick powders.

So in a leading case in this State, 9 Cowen, 775 in which the opinion is given by Mr. Justice Cowen, where a promise to pay in labor, couched in the form of a promissory note, the signature being forged, came before the Court, the Court held this could not be forgery, simply because, if true, the one who signed the note was not liable, unless it appeared that a consideration had been given; and that consideration not being upon the face of the note, and not having been proved by extreneous circumstances, the instrument itself was simply nudum pactum, and void on that account.

It seems to be clear, under the circumstances, of this case, that proof is ample to show that so far this was a valid contract—that is, that if the stamp had been put upon it by Mr. Abbey, or by his authority, Mr. Abbey could be held upon it; that it was clearly to his prejudice as well as tending to defraud both him and the public, and, therefore, within the definition of the common law as laid down by numerous authorities.

But other elements are necessary to constitute a contract than simply the body of the contract. Manifestly, it must be signed in some way or other to make it a binding obligation. That any writing, simply containing a statement, without the name of some person appended or signed to it, or in some way inserted in the document so as to make it appear to be the statement of that person, can not be the subject of a forgery.

We come now to what is necessary to constitute a signature to such a contract so that it may be the subject of a forgery. It must be plain that if the signature itself, being an original, could not bind the party, of course the counterfeit of that signature, or the forging of it, would not. That is a plain proposition. Now, then how will it be, if such a signature is appended as contains in itself the name of a person with intent to make the public believe that that person himself signed it, and couched in such language, or put in such form, that an ordinery person under the existing circumstances shall believe that that signature was appended by the person whose name is included in the signature? This seems to me to be the test in this case.

I think it is in Greenleaf, the second volumn, that we find, as bearing upon this question of legal efficacy, a statement which I will read. He says, Section 105, of Volume 3, that it must be such as is calculated to deceive. "It must appear that the in-
"strument on its face had such resemblance to the
"true instrument described as to be calculated
"to deceive persons of ordinary observation,
"though it might not deceive experts or persons
"more than orndiarily acquainted with the sub-
"ject. The want of such appearance on the face
"of the paper can not be supplied by evidence of

" any declarations or representations made by the
" party charged at the time when he uttered and
" passed it as true." In other words, the paper must of itself, on the face of it, contain such a representation that an ordinary person—not an expert—may be deceived, so that if the prisoner in this case, in disposing of these tickets, had attended them with representations that that was the way that Mr. Abbey ordinarly signed his name, and on the strength of that the tickets had been taken, it would not help in the slightest degree to make the case one of forgery. It would rather tend, if anyanything, to take from it the nature of forgery, and convert it into an ordinary case of obtaining money under false pretenses. The paper of itself must contain such a signature that the ordinary papers one might suppose that Henry E. Abbey himself, or by his agent, signed it. And the same author goes on to say: " But a mere mistke, such as
" a blunder in the spelling of a name, will not
" make any difference, it being sufficient to con
" ititute the crime if a signed writing which is
" forged be intended to be taken as true, and
" might so taken by ordinary persons."

The question then, is whether this such a signature as might be taken by persons in the City of Mexico of ordinary intelligence as being tickets issued by Henry E. Abbey, or by his authority. A significant circumstance, to which I call the attention of counsel in the argument, I will allude to in this connection. It appears that the prospectus has appended a printed signature in the words "The Company." It appears nowhere, if I am correct in my recollection of the evidence (and if not, I hope counsel will correct me) that the words "Henry E. Abbey" were used except upon these tickets. Counsel called my attention to the prospectus, in which the words "Henry E. Abbey Company" appear, at the head of the prospectus, but not purporting to be in the form of a signature. I think I am right in saying that there is nothing in the evidence anywhere that shows any signature with the words "Henry E. Abbey" except in the ticket itself; and the question is whether any ordinary person, under such circumstances as have been described in this case, would not have been deceived into concluding that Henry E. Abbey had either stamped or authorized to be stamped, his name upon these tickets.

It seems from an examination of the authorities, that there must be a signature which in some manner resembles the signature of an original. The degree of this resemblance to constitute the crime of forgery is very difficult to determine. It seems to me that the circumstances of each particular case may have to be called in requisition, or may be pertinent, in determining what degree of likeness to the original the law requires. That an exact facsimile of the handwriting is not necessary is plain.

That it need not in any degree resemble the handwriting of the original, I think, is plain. That it need not be in writing at all, but may be made by means of an engraving, or a sterotyping process, or in any other manner, is plain. Whether in the ordinary printing type, would not appear to be so clear upon the earlier authorities, but authorities have been cited here which would make it seem as though the charge of forgery or a signature might legally lie where only type were used.

In a case reported 3 Gray, Mass., Commonwealth vs. Ray, a careful study of which I have made, it appears that the entire ticket was executed from a sterotype plate. It would seem from an examination of the case that the signature of the ticket, the name "D. L. Framer," purporting to be an imitation of his hand writing; and the point was taken that there must be an actual writing of the signature in order to constitute forgery. But the Court, both below and on appeal, and held that circumstances determined whether this were a requisite or not. The Court says: "The course of business and the necessities for greater facilities for dispatch have induced to some extent the practice of having contracts and other instruments wholly printed or engraved, even including the name of the party to be bound." Now, it would hardly seem that such shadowy distinction could be maintained by the courts as that counterfeit of the signature must at least exist, as that type must be used in script—script type—instead of the ordinary type, in order to constitute a forgery. And, in fact, an examination of all the authorities leads me to the conclusion that the distinction, after all, is the intent with which the signature is employed, and whether the means of employing it are such as would be likely under the circumstances to impose upon people of ordinary intelligence.

It could hardly be expected that such tickets as tickets for a season of concerts, to be given to a whole city, to be issued to the entire public, should be in writing. Therefore, when it is once conceded, (as we all know, it is the practice—and under the circumstances it could hardly be otherwise,) that the tickets should be all in print, it would hardly seem that the distinction should rest upon the handwriting—whether the handwriting is attempted to be imitated on the ticket by means of lithograph, or otherwise, or whether simply type are employed.

I cannot come to any other conclusion in this case than that the distinction lies, after all, in the intent with which the name is used, and that circumstances must determine whether there was a likelihood that the public, to whom the tickets in this case were disposed of, would be deceived by the kind of signature employed.

It seems to me that it was clearly the intent of the prisoner, thus far, as the testimony shows, to lead the public of Mexico to the conclusion that Henry E. Abbey, whose name is printed upon this ticket in the form of a seal, giving it the appearance of a signature, either himself personally, or through his duly authorized agent, stamped the tickets for the purpose of disposing of them to the public: that otherwise he would not have employed the words "Henry E. Abbey" as he did; that he would not have employed a different colored ink for that purpose, as he appears to have done; and, in fact, that he would not have labored so assidously to convey by every means within his power to the public the impression that Henry E. Abbey had authorized these tickets, at the same time carefully guarding against using a similitude or a counterfeit of Henry E. Abbey's signature,

Under the circumstances, the qustion arises what is the duty of a magistrate, with such impression as to what constitutes forgery, to do, sitting to administer the law, so far as the Revised Statutes have appointed him so to do, relating to extradition.

Being of the opinion, as I am, that a prima facie case has been made out, and that there is reasonable ground to believe that the offence charged constitutes forgery wtihin the definition of the common law, so far as the authorities throw any light upon the requisites going to constitute that offence, it seems to me my duty to deny the motion made by the defendant, and put him upon his proof of the facts in the case—having in view always the fact that the prisoner has his remedy, not alone in defending himself in the courts of the country to which he is remitted, but has his remedy here in the place of his prelimilary examination, and particulary in such a case as this, where, it seems to me, the case is likely to turn upon questions of legal construction, rather than upon questions of fact. These questions of legal constructions are not conclusively determined by the commissioner, but are within the province of the Court upon an appeal taken in the usual form of a writ of habeus corpus to determine. I not only think it is my duty to deny the motion of the prisoner's counsel, but I am clearly of the opinion that I should not discharge my duty under such circumstances if I discharge him.

Opinion of Judge Lacombe.

The first proof raised by the relator is that the theatre ticket which is the subject of the charge was wholly printed and not written.

Counsel cites from Blackstone, Bishop, East and Russell definition of the crime of forgery at common law which describe it as the false making, &c. of a *writing* or a written instrument. It was elementary law, however, long before Blackstone's day that printing is writing in the legal sense of the term and an instrument the words of which are printed either wholly or in part is equally valid with an instrument written by a pen. Signature by impression from a stamp was no doubt infrequent when its use by Mr. Crawford, Secretary of the Treasury, was approved, but the necessity of modern business have made it a common practice and of its validity under the common law there can be no doubt. *Vide* law Dictionaries of Burrill and Abbott under word "writing": 2 Black. Com. 297; 1 opinions of Attorney General, 670; Sanders v. Jackson, 3 Rep., 180; Same v. Same, 2 Bos. & P. 238; Clason v. Bailey, 14 Johns., 409; Henshaw v.

Foster, 9 Pick., 512; and cases cited on the argument.

II. The relator next contends that forgery at common law cannot be predicted of such a ticket as this because it did not contain a contract; there was no consideration expressed in it, nor did it contain any promise.

The very definitions, however, which he cites under his first point speak of the written instrument as one which "if genuine might apparently be of legal efficacy, or the foundation of a legal liability"—or by which another may be prejudiced." It is not necessary that the subject of forgery be shown to be a complete executory contract expressing a consideration. Instrments of evidence by which a contract is proved may be forged just as well as the contract itself if wholly expressed in writing. (See Opinion of Judge Brown in this Circuit *In re* extradition of Tully, 20 Fed. Rep., 812).

There is a line of authorities, many of which are cited by the relator whih hold that where the forged instrument purports to be a contract and is void on its face, it is not the subject of forgery. Thus in *King v. Jones*, 1 Leach's Crown Law, the bogus bank note was void on its face, it would not have been a bank note if genuine and no outside testimony could have made it such. In *R. S. Mitchell* Foster's C. C., 119, the forged order was held not to be an order within the term of the special statute under which the prisoner was indicted. Here, as relator contends, the case must be decided by the rules of the common law. In *Rex v. Pateman* Russel & R. C. C. Res., 453, the bogus instrument was unsigned and therefore if genuine did not purport to be a promissory note. In *King v. Moffatt*, 1 Leach. Cr. Law, 431, the bill of exchange if real would not have been valid because it failed to comply with statutory requirements, no evidence could make it valid. In *Queen v. Closs*, 1 Dearsly & Bell C. C., 460, the court merely held that a picture was not a document or writing. In the matter of Chas. *Windsor*, 10 Cox. C. C., 121, the prisoner was discharged because the false entries which he made did not purport to be made by another. In *People v. Savage*, 5 N. Y. Crim. Rep., 543, where defendant was charged with forging and altering a pawn ticket, the conviction was reversed because the District Attorney and the court were apparently satisfied with the soundness of the contention of prisoner's counsel that by the Penal Code of New York, under which the trial was had, the definition of forgery is much narrower than at common law. In *People v. Martin*, (N. Y. Sup Ct. 885 MS.) the railroad bonds were unsigned, and the same was in *People v. Cunningham*, 4 Hun, 457. In *People v. Fitch*, 1 Wond., 198, the prisoner altered the date of an order drawn by him, accepted paid and theretofore returned him. In *People v. Wilson*, 6 John., 320, the bank note being less than $1. its circulation was forbidden by statute. In *People v. Harrison*, 8 Barb., 560, the acknowledgement was defective on its face. In *People v. Mann*, 75 N. Y., 484, the prisoner, a county Treasurer, signed his own name to the obligation; conviction was reversed because the instrument did not pnrport to be the act of another, it was false assumption of authority not forgery. It is moreover well settled by authority that where the forged instrument is not void on its face, but only incomplete or uncertain, extrinsic evidence may be introduced showing its validity. Such an incomplete instrument may be the subject of forgery. There is nothing upon the face of these tickets which proclaims them void. They are in the usual form of such instruments which do not ordinarily contain the expression of a consideration, or a distinct agreement expressed in words to admit the holder. None the less the holders of them if genuine would find them of legal efficacy if the performance being given, they were arbitrarily refused admission, and came into court to enforce their rights.

In addition to the numerous authorities in support of these propositions cited in the complaint's brief, it will be sufficient to refer to *People v. Stearns*, 21 Wond., 9; *Commonwealth v. Ayer*, 3 Cush., 151; *McCrea v. Marsh*, 12 Grey, 211; *Drew v. Poer*, 93 Pa. St., 234; *Wood v. Leadbritter*, 13 M. & W.; *Taylor v. Waters*, 7 Tannt., 374; *Barton v. Sheriff*, 1 Allen, 133, *McGoverney v. Staples*, 7 Lansing, 145.